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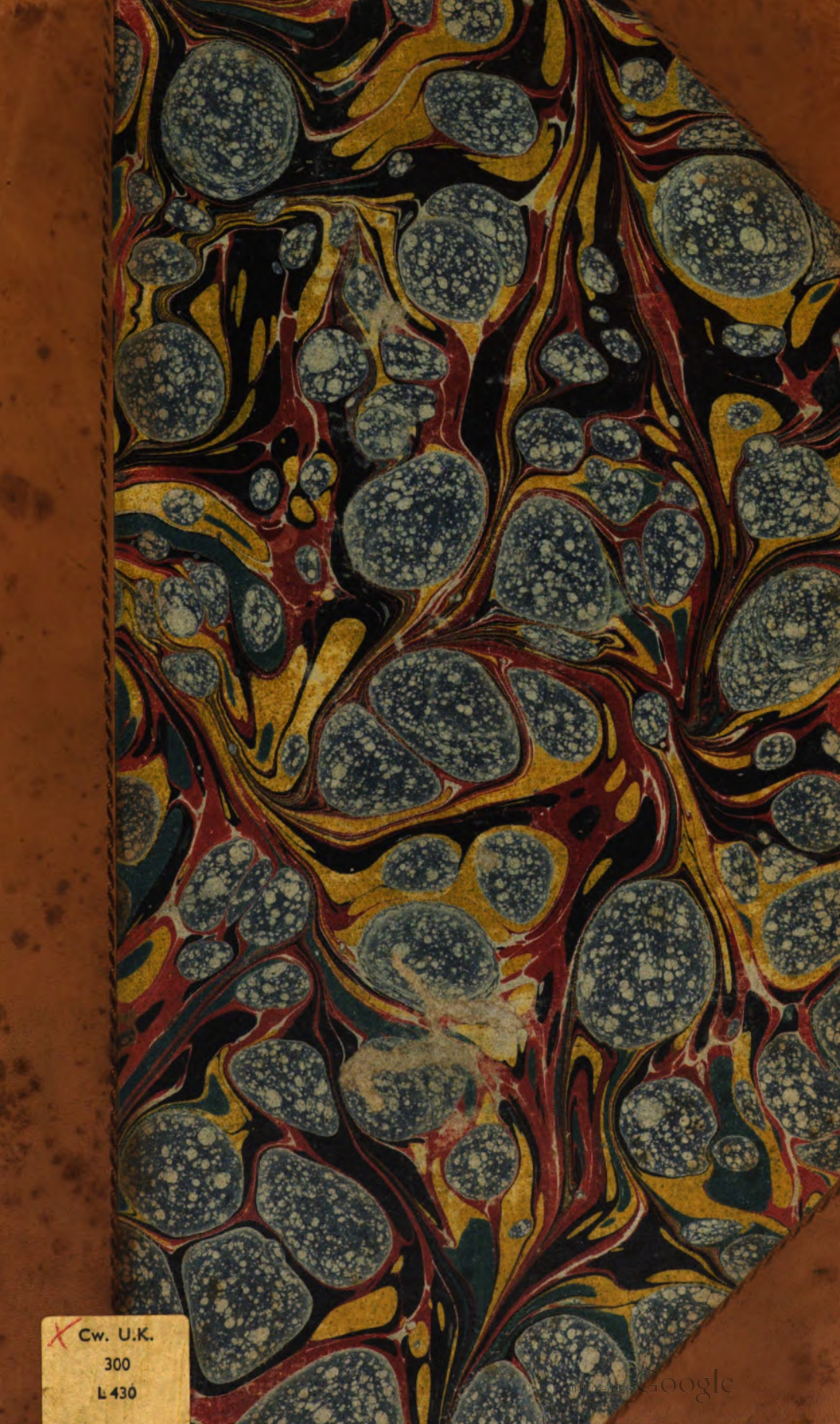
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THE
LEGAL OBSERVER,
OR
JOURNAL OF JURISPRUDENCE.

PUBLISHED WEEKLY.

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INCLUSIVE.

———"Quod magis ad nos
Pertinet, et nescire malum est, agitamus."

HORAT.

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The Legal Observer.

SATURDAY, MAY 1, 1841.

— "Quod magis ad Nos
Pertinet, et nescire malum est, agitamus.

HORAT.

THE NEW EQUITY COURTS.

THE debate on the Chancery Reform Bill on Friday last, was on the whole very satisfactory; much was done and more was promised. We may now congratulate the profession and the suitor, on the establishment of two new Courts for the disposal of equity business; for we cannot conjecture any untoward circumstance likely to occur to prevent the measure becoming the law of the land. We shall then have five Equity Courts sitting all the year round, in communication with each other, with a uniform practice, and co-operating with each other for the disposal of business. We think this will tend greatly to the benefit, as well of all classes of the profession, as of the public at large. It is the first great step to that complete reform in Chancery which we have so long advocated, and for which we have endeavoured to prepare our readers. Accompanied by these other changes, we think it will be of the greatest service, but we are bound to say that if it stands by itself, it will do but little. It will expedite and assist one stage of a cause—the hearing—but nothing more. There is, however, no reason to suppose that it will be allowed to stand by itself. The profession is getting a little impatient on the point, but we believe that the extensive powers given to the present Judges of the Courts of Equity will not have been given in vain. We believe that, making all due allowances for the importance and extent of the proposed alterations, and the great advantages to be derived from their being made in connection with each other, no time has been, or will be lost, in bringing them into operation. Let us now, however, turn to the recent

debate. The first point which was discussed was, whether the Accountant General of the Court of Chancery was to receive any increased remuneration by this bill, and the conversation that took place on this point was not uninteresting. The question arose on clause 7, by which the funds now in the hands of the Accountant General of the Court of Exchequer are to be transferred into the hands of the Accountant General of the Court of Chancery.

Sir E. Sugden said, that this clause proposed to transfer to the Accountant General of the Court of Chancery the funds now standing to the accountant of the Court of Exchequer. This arrangement would increase the emoluments of the former officer. The proposed appointment of two new judges, or one new judge, would also have a similar effect, as the same amount of business would then be transacted in a shorter time. He therefore wished to know whether the Attorney-General could give him an estimate of the probable amount of the future income of the Accountant General of the Court of Chancery. The present amount appeared to him to be amply sufficient. When the business of the Court of Exchequer should come into the Court of Chancery, the additional expense of clerks would not be paid for by the Accountant General, but the public, whilst the increased amount of fees would go to enlarge his emoluments.

The *Attorney General* was not prepared on this occasion to state what was the exact amount of salary which the Accountant General would receive, but he did not think there would be a great addition to his present salary, because the sum in the Court of Exchequer was extremely small.

It was further stated, in the course of the discussion, that the emoluments of the office are about 5000*l.*; and we have heard them mentioned as even higher than this. Ultimately it was agreed that there should be

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no increase in the fees of the Accountant General, and, this we must say, appears to us to be the right conclusion.

The next point was of more importance. It was whether the increase to the judicial strength of the Court should consist of one or two judges, and the House was almost unanimous in the opinion that two were necessary. The Attorney General, Mr. Lynch, Mr. Pemberton, Mr. C. Buller, and Mr. J. Stewart, all supported the addition of two, and the only opposition was from Sir E. Sugden; for although Mr. Hume at first seemed to doubt the propriety of more than one, yet he was satisfied when he found that the office of the third Vice Chancellor could not be filled up without coming to Parliament. The whole of the debate was valuable; but we must content ourselves with a short extract from the speech of Mr. Pemberton:—

Look at the evidence which had been adduced before the committee of the House of Lords. Some of the leading members of the profession had there been subjected to a strict cross-examination by some noble and learned lords who sat upon that committee. The effect, however, of that evidence went to prove that the average arrear of causes in the Court of Chancery was between 600 and 700. In the Vice Chancellor's Court, a period of from two to three years must elapse between the time at which a cause was set down for hearing and the time at which it would be heard, and that in the ordinary course of business some causes came on twice, and some times oftener, for hearing. Now, he believed that his right hon. and learned friend was right when he said that these delays not unfrequently led to compromises; but still, if 24,000*l.* per annum would enable justice to be administered without delay, it seemed to him (Mr. Pemberton) that the expenses of two additional judges would be compensated by the relief from delay which would thus be given to suitors. Such then had been the evidence which had been produced from all quarters to satisfy those who were but little disposed to be satisfied, but who finally arrived at that conclusion. Had anything since happened to alter that determination, and what was in fact the real state of business at present? The total number of causes in a state for hearing in the Rolls Court was 139. Undoubtedly this was an arrear, but nothing of an arrear compared with what they were accustomed to see, not only in the Court of Chancery, but even in the courts of law. But still that was not a satisfactory position of affairs. The cause, for instance, which had been heard to-day was set down for hearing so long ago as the month of July last. And during these long delays, look at the accidents by which the hearing of a cause might be still further postponed. Suppose twenty parties to a suit, and one of those parties, un-

happily for the rest, should happen to die in the meantime. Why, in that case, a new suit would be superadded, because the old original suit was rendered defective by the death, and although eight or nine months might not be long to wait for the recovery of a demand, yet a further extension of delay became a grievance and a hardship upon the suitors, from which he for one should be glad to see them relieved. He thought it was desirable that the state of business in each court should be such that when they rose for the vacation no suitor who was ready for a hearing should remain undressed. But if this was the state of things in the Rolls Court, what was it in the Vice Chancellor's Court? His hon. and learned friend the member for Galway (Mr. Lynch) had underrated the number of cases in arrear in that court. He (Mr. Pemberton) presumed that his hon. and learned friend excluded from his calculation causes which were abated, but the number of causes set down in the book he (Mr. Pemberton) held in his hand was 619. Now what was the progress made in hearing causes, as shown by the returns which had been obtained by his right hon. and learned friend (Sir E. Sugden)? The progress made in disposing of causes in the general paper last year was 173, excluding all short causes. Now there was on the roll of the Vice Chancellor's Court 619 causes set down, and disposing of them at 173 or 200 causes each year, from two to three years must elapse before they were all heard. He felt very sensibly the inconveniences of such a system of delay, and he trusted they would be obviated by the appointment of two new judges.

We think that this is surely sufficient to justify the proposed increase.

The next point was as to the rank of the proposed new Judges, and after some opposition from Mr. Hayter, it was agreed that all the three Vice Chancellors should, (without prejudice to the rights of the present Vice Chancellor,) rank *after* the Lord Chief Baron, and the salary, with the same exception, was fixed at 5000*l.* per annum. We regret this latter determination—the object is to gain the most competent men for Judges, and the addition of 1000*l.* a-year might just turn the scale in favour of a first-rate man taking the place. Let us, however, hope for the best.

The only other point which arose on this bill, was the proposed compensation to Mr. Scarlett who had been appointed after the bill had been brought in. This led to the only division on the bill, and was carried by a majority of 73 to 70. Most of the lawyers, without reference to politics, voted for the compensation, and we think they did right. There is no greater mistake, in our opinion, than to be niggardly in matters of this sort in settling great questions. We

have always been friendly to liberal compensation in all legal reforms, and we think it is a wise and sound, as well as just policy to be so.

So far as to the appointment of new Judges: but it must not be supposed that the feeling in favour of an extensive Chancery Reform will be satisfied with this small instalment. Almost every body who took part in the debate, declared that further and other reforms must be made. Mr. C. Buller said that "this was the first step towards a great and useful series of law reforms." Mr. Pemberton, in adverting to the act of the last session said,—

There was one point in this bill of which he highly approved—he alluded to the provision for enabling the Lord Chancellor to make rules and regulations for the improvement of the practice of the Court of Chancery. He (Mr. Pemberton) was well aware that several members of the bar, of opposite politics, had most honourably devoted themselves to that subject, and were now and had been for months engaged in considering alterations and framing regulations and rules which might be introduced into the practice of the court, and be productive of the greatest possible benefit to the suitors, and induce a great influx of business, by not only removing the delays in the hearing a cause, but the delay in the final prosecution of a suit in the master's office.

And Mr. Stewart said that this bill would remedy only one cause of expence and delay—the hearing of a cause—and that in his opinion, to be useful it must be accompanied with a complete reform of the present practice of the Court, as well before the cause was set down, as after the decree was obtained, and in working it out in the Master's office.

We take then this bill as a first instalment, and we trust that the new rules and orders which are to render it efficient, will be speedily forthcoming.

REMOVAL OF COURTS FROM WESTMINSTER.

We have great pleasure in stating that the result of the Solicitor General's motion on Tuesday last (to which we adverted last week) was the appointment of a select committee to inquire into the subject, with the general approbation of the House of Commons, no dissenting voice being heard. We have from the earliest period of this work advocated the removal of the Courts of Law to the neighbourhood of Lincoln's Inn.

Ten years ago, on April 23, 1831,^a the plan was broached in these columns, and on April 27, 1841, we have the satisfaction of finding it brought forward by the government of the day, with every prospect of being carried through. This is not only good in itself, but it encourages us to persevere in the other reforms which we have recommended, and from time to time brought under the notice of our readers—the consolidation of the statute and common law—the improvement of the present system of law reporting—the more equal distribution of professional patronage—the reform of the Masters' offices, and the other offices connected with the Court of Chancery,—and other matters familiar to our readers. All this we hope shortly to see as prosperous as we believe the plan for the removal of the Courts now to be.

On introducing the measure the *Solicitor General* stated his case with his usual strength and clearness.

He said that there was no class in society less disposed to associate for any purpose than were the *solicitors*. For many years they had suffered great inconvenience, owing to the present state and condition of the buildings in which the courts of law and equity sat for the transaction of public business. Though the solicitors had so long suffered from this inconvenience, yet, so strong was their dislike of change, that they refrained from calling the attention of Parliament to the subject, and nothing but a sense of overwhelming inconvenience could at length induce them to move in the matter. He need scarcely observe that they were the class best informed upon the subject, since their duties brought them into constant attendance upon the courts. The solicitors were of all others the best qualified to judge how far the present buildings were calculated to afford the necessary accommodation and facilities for the transaction of business; they had no motive to effect anything except that which was as much calculated to advance the public interest as to promote their own convenience. The convenience of the solicitor was inseparable from the advantage of the suitor. The solicitors in their petition stated that the present site of the courts of law and equity was distant from what they termed "the legal quarter of the town;" that the great mass of the solicitors had their chambers in the neighbourhood of the barristers' chambers, and of necessity were in constant communication with them.

No one could doubt the importance of any matter having the least connexion with the administration of justice, and no one could doubt

^a 1 L. O. p. 387. See the references to the other articles on this subject, in the General Index to the first twenty vols., just published: words, "*Courts of Law*."

that any statements made by solicitors upon such a subject was well entitled to the serious consideration of the House. Though originally adverse to the opinions which they entertained upon this point, he could not help saying that further reflection had served to convince him that the grounds of their petition only required to be fairly stated, in order to insure the assent of every honourable member in that house. It had often been stated that the reason why the courts of law and equity were continued at Westminster was their contiguity to the Houses of Parliament, otherwise no one would have ever thought of placing them in that remote part of the town. It was a mile and a half from that which might be called the legal quarter of the town. Formerly the courts of justice travelled from place to place, according as the monarch thought proper to change his residence; therefore, in former times the inconvenience now complained of could not have been felt. The fact was that the site at Westminster had only been chosen because it was the *palace of the monarch*.

Then there were these further distinctions between the present and the former practice of the courts:—In ancient times all the pleadings were oral; in the present day they were all carried on in writing. Formerly, actions related to landed property almost exclusively; the number of barristers were few, and the business of the courts limited. The whole arrangement of the existing courts of justice was in all respects different from that which the present state of things required, and the only ground of surprise was that the accommodation afforded to those concerned in the transaction of business at the courts should remain stationary.

The Legislature now had a bill before them, the object of which was the creation of *new courts* of justice; they were therefore the more especially called upon to provide accommodation for them and for the existing tribunals. Here, he wished to observe, that a large proportion of the business of the Court of Chancery required that the barristers who practised there should attend at their chambers in Lincoln's Inn, and that they should also attend the courts. The effect of the present state of accommodation was, that every thing which related to the preparation of pleadings, and the progress of the suit was transacted out of term, for while the court sat at Westminster the gentlemen who practised at the Chancery bar were necessarily in attendance on it. Honourable members would at once see that this was a fertile source of delay in all Chancery proceedings.

He thought it material to state that when Sir John Soane was called upon to furnish plans for the courts of law and equity, he gave in, at the desire of those who employed him, two plans: the cheaper of which was adopted, contrary to his wishes; and so strongly was he persuaded of the unsuitableness of that cheaper plan to afford the accommodation really required, that he presented a petition to that House protesting against its adoption.

The *Court of Review* was soon afterwards established, and the business of the Rolls required that the *Muster of the Rolls* should no longer limit his sittings to the evenings; accordingly his court was transferred to Westminster, but the only place which could be found for his accommodation was an apartment that had previously been used as a bed chamber, and the Court of Review was located in an old lumber-room, a most inconvenient, wretched place.

The only ground that could possibly be alleged for continuing the courts at Westminster was their contiguity to the House of Lords, to the Judicial Committee of the Privy Council, and to the committees of the House of Commons; but these considerations, when opposed to substantial public interests, were of no sort of weight. There seemed to prevail an opinion that the courts of law and the houses of parliament ought to be established near each other, but there was no necessary connexion between them.

The plan proposed for erecting the new edifice had been submitted to Mr. Barry, and had received his full approbation; a splendid building could be erected, and ample accommodation afforded to all who had any business to transact. The *public records* could be placed in the basement floor; on the ground floor there could be such ample accommodation for the courts, for consultation-rooms, and for every other apartment which could be wanted, that he trusted no future ground of complaint would arise. The building might be in Lincoln's Inn Fields, still leaving 100 yards round it for plantations, and the expense might be defrayed from the suitors' fund in the Court of Chancery, and from the surplus of the fee fund in the law courts, which amounted to 20,000*l.* a-year. Thus the whole object might be accomplished without increasing the public burden.

Sir E. Wilmot seconded the motion.

Mr. Hume agreed with the hon. and learned Solicitor General, and rejoiced that common sense had at last made a conquest of the lawyers. The law courts had long been a discredit to this country. In February, 1836, he had pressed upon the Government the necessity of a change, but at that time the subject received no attention, and was resisted as an objectionable tendency to innovation.

The motion was carried unanimously.

REGISTERING CHANCERY ORDERS TO AFFECT ESTATES.

We learn that an important decision was made by the Court of Exchequer on the 28th April, in the case of *Gibbs v. Pike*, relating to the effect of the 1 & 2 Vict. c. 110. An order was made by the Court of Chancery to pay a certain sum into Court, to the credit of the Accountant General. The party who obtained the order registered it with the Senior Master of the

Common Pleas, and it became a charge on the estates of the other party. The money was paid into Court, but there appeared to be no means of discharging the incumbrance from the register. It therefore remained, and the party having contracted to sell some estates, an objection was taken to the title on the ground of this registered order. For the damage thus sustained an action was brought, and a demurrer was filed by the defendant. The question for the Court was, whether an order to pay money, not to any person as a debt, but to the Court, comes within the meaning of the act, and the Court held that it did not, and overruled the demurrer.

PRACTICAL POINTS OF GENERAL INTEREST.

ABDUCTION.

By stat. 3 Hen. 7, c. 2, it was enacted that if any person should for lucre take any woman, being maid, widow, or wife, and having substance either in goods or lands, or being heir apparent to her ancestors, contrary to her will, and afterwards she be married to such misdoer, or, by his consent, to another, or defiled, such person, his procurers and abettors, and such as knowingly receive such woman, should be deemed principal felons, and by stat. 39 Eliz. c. 9, the benefit of clergy was taken away from all such felons who should be principals, procurers or accessories before the fact. The punishment of death for this offence, however, was mitigated to transportation by stat. 1 Geo. 4, c. 116, and all former statutes on the subject are repealed by statute 9 Geo. 4, c. 31, which enacts (s. 19) that where any woman shall have interest, whether legal or equitable, present or future, in any real or personal estate, or shall be an heiress presumptive or next of kin to any one having such interest, if any person shall, from motives of lucre, take away or detain such woman against her will, with intent to marry or defile her, or to cause her to be married or defiled, every such offender, and every such person counselling or abetting such offender, shall be guilty of felony, and be liable to transportation for life, or any term not less than seven years, or to be imprisoned with or without hard labour for any term not exceeding four years. In the construction of the statute of Hen. 7, it hath been determined:—1. That the indictment must allege that the taking was for lucre, for such are the words of the statute, (1 Hal. P. C. 660; 1 Hawk. P. C. 109) which are followed by the stat. of Geo. 4. 2. In order to shew this, it must appear that the woman had substance, either real or personal, or was an heiress apparent; and, under the recent statute, there must be an averment in the indictment that the woman has an interest in some real or personal estate. 3. It must appear that she was

taken away against her will. 4. It must also have appeared, under the stat. of Hen. 7, that she was afterwards married or defiled; but this is not necessary under the recent statute, the taking away with intent to marry or defile being sufficient. And though, possibly, the marriage or defilement might be by her subsequent consent, being won thereunto by flatteries after the taking, yet this was felony if the first taking were against her will (1 Hal. P. C. 660). And this continues so under the recent act, and so *vice versa*, if the woman be originally taken away with her own consent, yet if she afterwards refused to continue with the offender, and were forced against her will, she might, from that time, as properly be said to be taken against her will, as if she never had given any consent at all; for, till the force was put upon her, she was in her own power. (1 Hal. P. C. 110.) It is held that a woman thus taken away and married, may be sworn and give evidence against the offender, though he is her husband *de facto*, contrary to the general rule of law, because he is no husband *de jure* in case the actual marriage was also against her will. (1 Hal. P. C. 661; 1 Phil. Ev. 71b edit.) In cases indeed where the actual marriage is good, by the consent of the inveigled woman, obtained after her forcible abduction, Sir *Matthew Hale* seems to question how far her evidence should be allowed; but other authorities (Cro. Car. 488; 3 Keb. 193; State Trials, v. 455; *Wakefield's case*, N. Ass. Spring, 1827) seem to agree that it should even then be admitted, esteeming it hard that the offender should thus take advantage of his own wrong, and that the very act of marriage which is a principal ingredient of his crime, should (by a forced construction of law) be made use of to stop the mouth of the most material witness against him. See 4 Stewart's Blackstone, pp. 234 & 235.

A case has recently occurred under the stat. which we shall bring under the notice of our readers. The prisoner was indicted for having feloniously and from motives of lucre taken away and detained Maria Ellis against her will, she having a future interest in certain personal estate, "with intent her the said Maria Ellis to marry." It appeared from the evidence of Miss Ellis (who was about 17 years of age) that the prisoner was a music master, and that she had first known him in the year 1838, when he taught her music at a school kept by Mrs. Wilson at Stamford, soon after which time he paid his addresses to her, which were favourably received by her, but which her relatives insisted on her breaking off. It further appeared that Miss Ellis was sent to a school at Somersham, kept by Miss Pocock, where the prisoner at the beginning of the year 1840, had an interview with her, which being discovered by Miss Ellis's friends, she, by their direction, wrote the prisoner a letter, breaking off all "correspondence and intimacy for ever." This was dated Feb. 10, 1840, but, on Feb. 20, 1840, she wrote in pencil, unknown to her friends, a letter to the prisoner, explaining her conduct, containing several kind expressions,

declaring her determination never to marry, and concluding with a prayer that the Almighty would watch over the prisoner. The following is a part of the letter: "I have one favor to ask you which I hope you will comply with, as it will be the last, perhaps, for ever; that is, that you will never pass me at Peterborough, or any other place you may meet me, without speaking to me. This may be an improper request, but if you did, no words can express my feelings. I think it would almost kill me." It further appeared that on the 3d of March, 1840, Miss Ellis was walking out with her schoolfellows, when she saw the prisoner and another person in a gig, and almost immediately afterwards the prisoner came behind her, and, having placed his hand on her shoulder, carried her in his arms to the gig, she struggling and screaming all the time as he was doing so. It was proved that the two prisoners took her in the gig to St. Ives, where the prisoner Mayle got out, and the prisoner Barratt alone took Miss Ellis to an Inn at Huntingdon, from which they proceeded in a post chaise to Thrapstone, and thence in another chaise to Wellingborough; and it was proved by Miss Ellis that during this part of the journey, the prisoner Barratt took out a pistol and threatened to shoot himself. It further appeared, that the parties proceeded in another chaise to the railwaystation at Weedon, at which place the brother of Miss Ellis came up and took her away from the prisoner Barratt. *Parke, B.*, said, (in summing up) I agree with the learned counsel for the prisoner, that there is a great distinction between this case and the case of *Rea v. Wakefield*, as there was not in that case any previous intimacy between the parties. I also agree with him as to his argument, that if all the other requisites of the statute constituting the offence are satisfied, and the evidence of the motive being the base and sordid one of lucre is unsatisfactory or insufficient, it will be your duty to acquit the prisoner of the charge of felony. It is clearly made out that Miss Ellis is entitled to personal property, and that the prisoner took her away with the intention of marrying her, and I think that the other intent [the intent to defile] may be entirely laid out of your consideration, as there is no evidence of it whatever. You will, therefore, say whether, the prosecutrix being a lady entitled to property, the prisoner either took her away or detained her against her will, with the intent of marrying her, but for the base purpose of getting possession of her property; and if you come to the conclusion that that was so, it will be your duty to find him guilty of the felony. With respect to the motives of the prisoner, evidence has been given of expressions used by the prisoner respecting the property of Miss Ellis, such as his having told one of the witnesses that he had seen Mr. Whitwell's will, and that she would be entitled to 200*l.* a-year. These expressions are important for you to consider, in order to your forming a judgment whether the prisoner was actuated by motives of lucre or not. Unless you are satisfied such a motive prompted him

to take away the prosecutrix against her will, he is entitled to be acquitted of the felony; and you will then consider whether he used any force to her person in taking her away, and took her away against her consent; for if he did, and he is not guilty of the felony, you may, under the present indictment, [by virtue of stat. 1 Vict. c. 85, s. 11] convict him of the assault. Verdict, guilty of the assault. *Reg. v. Barratt*, 9 C. & P. 387.

CHANGES IN THE LAW DURING THE PRESENT SESSION.

No. I.

4 VICT. c. 9.

TURNPIKE ACTS.

An Act for removing Doubts as to the Continuance of certain Local Turnpike Acts.

[6th April, 1841.]

Whereas sundry acts were passed in the fourth, sixth, and seventh years of the reign of his late Majesty, and in the first, second, third and fourth years of the reign of her present Majesty, for continuing, for the times therein respectively specified, certain acts for regulating turnpike roads, which but for the passing of such first mentioned acts, with the exceptions in all or some of such acts mentioned, would have expired: and whereas it was intended that by the first mentioned acts all local acts for regulating turnpike roads in Great Britain, which, but for the said first mentioned acts, would have expired with the session of parliament in the year one thousand eight hundred and thirty-four, or at any time since, or will expire at or before the end of the session of parliament in the year one thousand eight hundred and forty-one, should (with the exceptions in the first mentioned act specified) be continued until the first day of June in the year one thousand eight hundred and forty-two, and if parliament shall then be sitting, until the end of that session; but by reason of differences in the words used in the titles and in the enactments of some of the said first mentioned acts, doubts have arisen whether such intention has been duly carried into effect, and it is expedient that such doubts be removed: Be it therefore declared and enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, that all the local acts for regulating, making, amending, or repairing turnpike roads in Great Britain (except as above excepted) which, unless continued by some public general act, would have expired with the session of parliament in the year one thousand eight hundred and thirty-four, or at any time since, or will expire at or before the end of the session of the year one thousand eight hundred and forty-one, have continually been, and now are and shall continue to be, in full force and effect until the first day of June

In the year one thousand eight hundred and forty two, and if parliament shall then be sitting, until the end of that session of parliament.

The other acts passed during this session are the following:—

CAP. 1.—An act to settle an annuity on Lord Keane, and the two next surviving heirs male of the body of the said Lord Keane to whom the title of Lord Keane shall descend, in consideration of his great and brilliant services. [30th March, 1841.]

CAP. 2.—An act for punishing mutiny and desertion, and for the better payment of the army and their quarters. [30th March, 1841.]

CAP. 3.—An act for the regulation of her Majesty's Royal Marine forces while on shore. [30th March, 1841.]

CAP. 4.—An act to apply the sum of eight millions out of the Consolidated Fund to the service of the year one thousand eight-hundred and forty one. [30th March, 1841.]

CAP. 5.—An act to facilitate the recovery of arrears of tithe compositions in Ireland, vested in her Majesty under the provisions of an act of the first and second years of her present Majesty for abolishing compositions for tithes in Ireland, and for substituting rent charges in lieu thereof. [30th March, 1841.]

CAP. 6.—An act to continue, until the fourth day of August one thousand eight hundred and forty-two, and to the end of the next session of parliament, the several acts for regulating turnpike roads in Ireland which will expire at or before the end of the present session of parliament, or at or before the end of the session of parliament next after the fourth day of August one thousand eight hundred and forty-one; and to amend the acts for regulating turnpike roads in Ireland. [6th April, 1841.]

CAP. 7.—An act to amend the acts of the last session for taking account of the population. [6th April, 1841.]

CAP. 8.—An act to reduce the duty on rum and rum shrub, the produce of and imported from certain British possessions in the East Indies into the United Kingdom. [6th April, 1841.]

CAP. 10.—An act for extending to the county of the City of Dublin the provisions of an act passed in the nineteenth and twentieth years of his late Majesty King George the Third, in Ireland, intituled, an act to prevent the detestable practice of houghing of cattle, burning of houses, barns, haggards, and corn, and for other purposes, so far as relates to burning of houses. [6th April, 1841.]

QUESTIONS AT THE EXAMINATION.

Easter Term, 1841.

THE following Questions are taken, nearly *verbatim*, from those which were put at the Examination on Thursday last, the 29th April. We have arranged them for the Student in somewhat a different order from that in which they were printed for the Candidates, and hope that this method will be found useful.

I. COMMON AND STATUTE LAW, AND PRACTICE OF THE COURTS.

Will the verbal promise to pay the debt of another be sufficient on which to found an action?

Is it necessary, previous to the commencement of an action, to make a request or demand, or give notice to the opposite party, in order to complete the cause of action?

Practice in Personal Actions.

By what process are personal actions commenced in the Queen's Bench, Common Pleas, and Exchequer, and is there any difference in either of the Courts in the process against common persons and others having the privilege of peerage or of parliament?

Within what period must a plaintiff declare in an action, and what steps can a defendant take to urge the plaintiff on?

When the declaration does not disclose the particulars of the plaintiff's demand, in actions of *assumpsit* or debt, how are they to be obtained, and can they be obtained before appearance?

What time is required for notice of trial in town, and what in the country? and what does the expression "short notice of trial," mean?

In actions under 20*l.*, at what stage of the cause may application be made to try before the sheriff, and on what grounds? How and to whom should the application be made?

If there be several issues on the record, and some are found for the plaintiff and some for the defendant, how are the costs disposed of?

Can a plaintiff be nonsuited against his will, and in what respect is his situation better by a nonsuit than by a verdict for the defendant?

How soon after a trial can a plaintiff proceed to sign judgment and tax his costs?

Interlocutory Proceedings.

Can an application be successfully made to set aside proceedings for irregularity, if the attorney has taken any subsequent steps in the cause?

In what sort of action is it referred to the master to compute, and what steps are to be taken to obtain such reference?

Ejectment.

How do you commence an action of ejectment?

Can the unsuccessful party in ejectment retry the same question as often as he pleases without leave of the Court?

Inferior Court.

In order to remove an action from an inferior Court of Record to a superior Court, by what process is it effected?

II. CONVEYANCING.

Nature of Estates and Property.

What are the distinctions between an estate in joint-tenancy and in coparcenary?

What is the difference between an estate in remainder, and an estate in reversion?

Is there any and what difference between chattels real and personal?

If two or more persons are seised of an *advowson* as joint-tenants, how and by whom is the presentation to be made?

Is there any and what difference in the case of coparceners taking the *advowson* by descent?

What are *choses* in action?

Are they assignable and how, so as to be effectual at law or in equity?

Mortgages.

What covenants are usually inserted in a *mortgage* of houses and buildings?

In what mode or form should a mortgage of leasehold property subject to a rent be made?

Will any and what length of time bar the mortgagor's right to redeem, and what circumstances will preserve the right?

If a mortgagor on making a second mortgage conceal the first, what consequence will result to him from the omission?

Wills.

What is necessary to the valid execution and attestation of a will?

And to its revocation?

Sale and Conveyance.

What are the conditions proper to be made as regard the title and conveyance on the public sale of a freehold estate?

What are the essential requisites in the conveyance to a purchaser of an estate in fee simple?

III. EQUITY, AND PRACTICE OF THE COURTS.

Mortgages.

Can a *mortgagee* proceed against a mortgagor both at law and in equity at the same time, and how?

Will a mortgagee be compelled to elect, whether he will proceed at law or in equity, and if so, upon what terms?

When can a plaintiff be compelled to elect, whether he will proceed at law or in equity?

Infants.

In what cases and how will the Court interfere relating to the marriage of an *infant*?

Upon the marriage of an infant without the consent of the Court, what is the consequence to persons concerned in assisting or procuring such marriage, and what course does the Court usually adopt towards them?

Will the Court compel the husband of a female minor, marrying without its consent, to make a settlement of her property? and will it allow him to take any benefit under such settlement, and under what circumstances?

Practice and Pleading.

What is the mode of putting in an answer? and may the oath or signature be dispensed with, and how?

By what events does a suit become abated and a bill of revivor necessary?

Does a suit abate upon the death of a person having joint-interests with co-plaintiffs or co-defendants?

By whom, and in what manner, is the answer of an infant defendant put in?

Injunctions.

What are the different kinds of *injunction* issued by a Court of Equity, and at what stages of a suit?

State some of the purposes for which injunctions are granted?

How are the different kinds of injunction obtained?

Will the Court, under any and what circumstances, restrain a creditor from proceeding at law who is not a party to the suit?

What proceeding is to be taken to restrain such creditor from continuing his action?

IV. BANKRUPTCY, AND THE PRACTICE OF THE COURTS.

Object of the Law and Jurisdiction of the Court.

State generally the object of the bankruptcy laws: first, as regards creditors; secondly, as respects the bankrupt himself.

What is the nature and general extent of the jurisdiction of the Court of Review? Are infants and *femes covert* liable to be made bankrupts? State the general rule as to both.

Trading, &c.

What is essential to constitute a trading within the meaning of the statute 6 G. 4, c. 16?

Is it necessary that the trade be *legal*, and carried on in England? State the reasons for the answers given in each case.

What are the conditions of the bond given by the petitioning creditor?

Property passing, &c.

Does the real and personal property of a bankrupt in a foreign country, pass to his assignees, and why?

What is the general rule with respect to payment of rent of premises occupied by a person becoming bankrupt?

What is the rule as to powers vested in and exercisable by the bankrupt; and does it admit of any, and what exceptions?

Proof of Debts.

Is a debt payable upon a contingency provable; and if so, in what manner?

What is the course to be adopted by the insured, under a policy of insurance, or the obligee in a bottomry bond, where the underwriter, or obligor, is declared bankrupt, pending the risk?

In what respect do the rights and remedies of an equitable, differ from those of a legal mortgagee?

Bankrupt's allowance and certificate.

When is the bankrupt entitled to an allowance out of the assets of his estate; and what regulates its amount?

Is any allowance made to him in the discretion of the commissioners, and under what circumstances?

What are the requisites to, and the effect of, the bankrupt's certificate? and what exception (if any) exists as to its general operation in discharging the bankrupt from his debts and liabilities?

V. CRIMINAL LAW, AND PROCEEDINGS BEFORE JUSTICES OF THE PEACE.

Nature of various offences.

What is the usual and general distinction between felony and misdemeanor? Give an instance of each class.

What is homicide, and its different kinds? What is burglary?

Within which of the twenty-four hours must burglary be committed in order to constitute the offence?

If the offence be committed in a building occupied with a dwelling-house, must there be any and what sort of communication therewith in order to constitute the offence of burglary?

As the title-deeds to an estate are stated by Blackstone to concern the land and to savour of the realty, is the stealing of them any and what offence? or only trespass?

Is it any and what offence to destroy a will in the testator's lifetime?

What is simony?

What are the penal consequences to the patron who is guilty of it.

What to the clerk?

Effect of Conviction on Property.

If a person is convicted of felony, is his real and personal property, or either of them, forfeited, and from what time?

Proceedings before Magistrates.

What is the proper qualification of a county magistrate, and if he part with it, can he act without obtaining a fresh one?

If the condition of a recognizance to keep the peace be broken, what is the mode of proceeding upon it?

How is an indictment removed from a court of quarter sessions to a superior court at Westminster, and can it be removed into any of the courts there, or only into one and which of them?

Before whom is the disputed settlement of a pauper to be tried, and what are the preliminary steps necessary to bring it to trial?

Although 119 Candidates had given notice of their intention to be examined, only 98 attended,—all of whom, except five, were passed.

NEW RULE APPOINTING
THE COMMON LAW EXAMINERS.

Easter Term, 4th Victoria, 1841.

IT IS ORDERED that the several Masters for the time being of the Courts of Queen's

Bench, Common Pleas, and Exchequer respectively, together with Thomas Metcalfe, Edward Archer Wilde, Samuel Amory, Benjamin Austen, Robert Riddell Bayley, Michael Clayton, William Loxham Farrer, Richard Harrison, Philip Martineau, Charles Ranken, Charles Shadwell, and John Teesdale, Gentlemen, Attorneys, be, and the same are hereby appointed Examiners for one year now next ensuing, to examine all such persons as shall desire to be admitted Attorneys of all or either of the said Courts, and that any five of the said Examiners (one of them being one of the said Masters) shall be competent to conduct the said Examination, in pursuance of and subject to the provisions of the rule of all the Courts made in this behalf in Hilary Term, 1836.

Approved by the Judges of the Court of Queen's Bench, 17th April 1841.

Fortunatus Dwarrie.

Approved by the Judges of the Court of Common Pleas, the 19th April 1841.

Edward Griffith.

Approved by the Barons of the Court of Exchequer, the 19th April 1841.

Edward Bennett.

SUGGESTED IMPROVEMENTS IN THE LAW.

AUXILIARY COURT.

Mr. Editor,

The present arrears of business in the common law courts are of the greatest injury to the profession. Looking about for remedies, I should think the present system of new trials is capable of considerable im-

provement: too many cases are referred to the court above. The new rules have created a flood of business in court and at chambers, which might perhaps be remedied by a repeal or improvement of some of the new rules; the criminal side of the Queen's Bench is a great evil at present, which perhaps can only be remedied by giving the ordinary business to a single judge. However, the great object at present is to clear the courts of the arrears which are likely to increase until parties will think of making settlements of their causes, because no reasonable time can be pointed out when they can be decided by the judges: this is and will be a most serious delay of justice.

I beg to propose, in order to get rid of the arrears, that the chamber business should be done by one judge, being taken from those on duty, to go to the chamber business of all the courts. I propose to select one judge of great eminence, known to go through business well and speedily, as, for instance, Mr. Baron Parke: to him I would add two of the judges not on regular duty, and if necessary, one or two of the counsel who sit for the judge at the assizes might complete the court; they might sit for four days of the week, and if the bail court took an additional judge from the Queen's Bench, the auxiliary court might be composed of Common Pleas and Exchequer judges. The auxiliary court would take the shorter causes of arrears. Such a plan, though liable to considerable objections, would I am persuaded be of considerable service in clearing the courts of the arrears.

S. P.

ATTORNEYS TO BE ADMITTED, *Trinity Term, 1841.*

QUEEN'S BENCH.

[Continued from p. 455, Vol. 21.]

Clerk's Name and Residence.

Greatwood, Robert, 6, Princes' Street, Stamford Street.
Grant, Joseph Humphry, 7, Highbury Place; and 5, Rosoman's Buildings.
Gills, Netham John, 5, Verulam Buildings; Edgbaston; and the Club Chambers.
Gipps, Thomas, 5, Ampton Street, Gray's Inn Road; and Lewes.
Greaves, Charles Leman, 59, Newman Street, Oxford Street; and Fulham.
Gardner, James, 6, Myddleton Square.
Gwyn, William Horatio, 10, Red Lion Square; Long Stratton.
Harvey, Clement, Gloucester.

To whom articulated, assigned, &c.

William Greatwood, Birmingham; assigned to Richard Edgar Smith, Gray's Inn Place.
Henry Francis, Monument Yard.
George Paulson Wragge, Birmingham.
Edward Fullager, Lewes.
Thomas Rodgers, Devonshire Square; assigned to Edward Elkins, Newman Street.
Joseph Sherwood, 19, Dean Street, Southwark; assigned to Walter Landor, Rugeley.
Isaac Preston, the younger, Great Yarmouth.
John Chadborn, Gloucester; assigned to William Viner Ellis, Gloucester.

Clerk's Name and Residence.

Hanbury, Oliver Lunn, 53, Upper Berkeley Street; Leamington Priors; and Great Russell Street.

Hawley, Henry John Tovey, 10, Union Terrace, Camden Town.

Hair, Thomas, Kidderminster.

Hodgson, George, 37, Upper Stamford Street.
Hilton, Thomas William Leigh, 38, Trevor Square; and John Street, Adelphi.

Hartley, William, 12, Nelson Street, City Road.

Hooper, John, 7, Spring Terrace, Wandsworth Road.

Hanrott, Philip Augustus, the younger, 29, Queen's Square, Bloomsbury.

Hansler, Henry Stephen, 70, Aldermanbury.

Jukes, George, 18, Wakefield Street; and Shrewsbury.

Johnson, William, Marple, near Stockport.

Isaacson, George, 14, Gloucester St., Queen's Square; Mildenhall; and Liverpool St.,

Ingoldby, Christopher, the younger, 3, Percival Street, Northampton Square; and Louth.

James, Charles, Newnham.

Jacques, Frederick Viel, Bristol.

Johnson, Thomas, 5, Sloane Street; and Lancaster.

Kershaw, John, Grosvenor Terrace, Westminster; and Manchester.

Kitson, Frederick, Exeter; and Torquay.

Kelly, Robert, 8, Union St., Berkeley Square; and Osnaburgh Street.

Lawford, Henry Smith, Drapers' Hall; and Beckenham.

Langdale, William Atkinson, 38, Gower St., Bedford Square.

Lindsay, Richard Fydell, 22, Everett Street, Russell Square; and Boston.

Last, Charles Henry, 45, Great Russell Street; and Red Lion Square.

Lewellen, Henry, 30, Edward Street, Hampstead Road.

Mead, Joseph Choat Sawen, 20, East Street, Red Lion Square.

Mence, Charles Turner, 59, Bartholomew Close; Barnsley; and 50, Jewin Street.

Musgrave, John, Whitehaven.

Morse, William Henry, 19, Princes' Street, Stamford Street.

Marshall, Henry, 50, Marchmont Street; 35, Ditto; and Berwick-upon-Tweed.

Merivale, John Lewis, 15, Woburn Place.

Minty, Richard George Peru, 18, Chenies St., 8, Devonshire Street; and Norwich.

Munton, William, 14, Millman Street; and Banbury.

Milner, William, York.

Mott, Thomas, 37, Norfolk Street, Strand; and Much Hadham.

Matthias, George, 4, Verulam Buildings; and Gloucester.

Merewether, Herbert Walton, 7, Whitehall Place.

To whom articulated, assigned, &c.

Henry Lucas, Newport Pagnel.

John Peter Fearon, 1, Crown Office Row.

George Price Hill, Worcester; assigned to Henry Maddocks Daniel, Worcester and Kidderminster.

Percival Fenwick, Newcastle-upon-Tyne.

William Crie, Manchester; assigned to William Slater, Manchester.

Charles Wilson, 6, Southampton Street.

George Hooper, Dunstable; assigned to George Morton, Gray's Inn; assigned to James Williamson, Gray's Inn.

Philip A. Hanrott, the elder, 29, Queen's Square, Bloomsbury.

John Whitelock, 70, Aldermanbury.

Thomas Harley Kouge, Shrewsbury.

Aaron Eccles, Marple,

Wotton Isaacson, and Edmund Denton Isaacson, Mildenhall.

Christopher Ingoldby, Louth.

John James, junior, Newnham.

Thomas Jaques, Bristol.

Thomas Mason, Lancaster.

Robert Kershaw, Manchester.

William Kitson, the younger, Torquay; assigned to Ralph Barnes, Exeter.

Edward Willan, Gray's Inn Square.

Edward Lawford, Drapers' Hall.

William Stephens, 30, Bedford Row.

Messrs. Thirkill and Rogers, Boston.

Isaac Last, Hadleigh.

James Groves, the younger, Charlotta Street, Bedford Square.

Gilbert Bolden, Parliament Street, now of Exeter Street.

William Cookes Mence, Barnsley.

Richard Armistead, Whitehaven.

Henry Williams, Lincoln.

George Marshall, Berwick-upon-Tweed.

Henry Young, Essex Street.

Gardiner Chapman, Norwich.

John Munton, Banbury.

William Garwood, York.

Samuel Thomas Mott, Much Hadham.

Frederick Caiger, Winchester; assigned to Thomas Fenn Addison, Gloucester.

Thomas Adlington, Bedford Row.

Clerk's Name and Residence.

Neale, Robert, Yate, near Chipping Sodbury; Essex Street, Strand; and Bristol.

Pope, Benjamin David, 41, Chapman Street, Islington.

Pell, George, the younger, 16, Smithfield Bars. Postlethwaite, Thomas, 3, Sidmouth Place, and Workington.

Parr, Henry, 2, Guildford Street; Liverpool; Old Millman Street; and Chapel Street.

Parkin, George Lewis, 12, Regent Square. Place, John Swayne, 6, Southampton Buildings; 11, Ampton Street.

Prance, James Vaughan, 10, Devonshire Street, Poole; New Millman Street, and Great James Street.

Payne, John Webber, 14, Liverpool Street, Exeter; Southampton Street; and Princes' Street.

Payne, James Edward, 10, Upper Southampton Street, Pentonville; Palsgrave Place; and Down Ampney.

Palmer, Edward Seymour, 22, Henrietta St.; and Birmingham.

Rollitt, John, Kingston-upon-Hull.

Roxby, Joseph, 14, Ampton Street; King's Terrace; Bedford Street; and Croft.

Rivolta, Dominico Antonio, 44, Jewin Street.

Russell Thomas Francis, 2, Little Stanhope Street, Mayfair; Liverpool; and Warwick Street.

To whom articulated, assigned, &c.

Joseph Barker, Chipping Sodbury; assigned to Edward Daniel, the younger, Bristol.

William Samuel Price Hughes, Worcester; assigned to Henry Saunders, Kidderminster.

George Vincent, 9, King's Bench Walk.

Michael Walker, Whitelaven. assigned to Charles Thompson, Workington.

James Otley Watson, Liverpool.

William Parkin, 43, Chancery Lane.

David Powell, Neath, Henry Simmons Coke, Neath; assigned to Thomas Loftus, New Inn.

Martin Kemp Welch, Poole.

Hele Webber Payne, Winkleigh; assigned to John Daw, Exeter.

George Eyre, Eveline.

William Palmer, the elder, Birmingham.

William Dryden, Kingston-upon-Hull.

John Tinley, North Shields.

James Fawcett, 44, Jewin Street.

Thomas Harvey, Liverpool.

[To be continued.]

SUPERIOR COURTS.

Vice Chancellor's Court.

INFANT.—NEXT FRIEND.

The Court will not entertain a motion for removing the next friend of an infant, unless there be some reasonable ground for supposing that his continuance will be detrimental to the interests of the infant. The fact of the same solicitor who acts for one of the defendants, having a remote interest adverse to that of the infants, being also solicitor for the next friend, is not sufficient to induce the Court to interfere.

This was a motion on the part of three of the defendants for the removal of the next friend of the infant plaintiff, and for a reference to the Master to appoint another in his stead. The bill had been filed on behalf of the infant to have rights declared under the will of the testator in the pleadings named, and it prayed an account against the three defendants, on whose behalf the motion was made, of all rents and profits which had been received by them, and that they might be decreed to deliver up the premises in their possession belonging to the testator to the plaintiff.

K. Bruce and Coleridge, for the motion, stated that the next friend who had filed the bill, was the brother of Sarah Crosier, one of the defendants, whose interests were adverse to those of the plaintiff, and the solicitor who

had filed the bill acted also as the solicitor for that defendant. It was impossible, therefore, that the rights of the infant could be properly protected, and in accordance with the principles laid down in the case of *Peyton v. Bond*, 1 Sim. 390, a new next friend ought to be appointed. The infant had also expressed a great dislike to the defendant, whose brother was the next friend, and as he was seventeen years of age his wishes ought to be consulted.

Jacob and W. H. Smith for the next friend, submitted that there were no grounds whatever for the application. Affidavits had been filed in support of the motion, but they did not contain a single allegation of improper conduct on the part of the next friend or his solicitor, and the sole tangible ground alleged for the removal was that the solicitor employed by the plaintiff is also the solicitor employed by one of the defendants. The case of *Peyton v. Bond* was essentially different, for there was not only great personal misconduct on the part of the next friend and the solicitor, but an interest in the next friend manifestly adverse to that of the infant.

Richards and Cook, for the defendants Sarah Crosier and her husband, insisted that it was improper to make them parties to the application, and that they ought not to have been served with the notice of the motion. The defendants who made the motion were accounting parties, and the object was to obtain the appointment of a next friend, who might be favourable to their views.

K. Bruce in reply said, that the motion must be made by somebody, and the party making it must be liable for costs: that was the reason of its being made by his clients. It was necessary to serve all parties, because the effect of it might be to remove a party who was responsible for costs.

The *Vice Chancellor* said, the motion shewed there was some sort of ill-will existing, not necessarily connected with the suit. In *Peyton v. Bond*, *Sir Anthony Hart* said, that the Court would watch with great jealousy a solicitor who took upon himself a double responsibility, and if it saw a chance of his miscarrying, would take care, that where the plaintiffs were infants, that he should not be permitted to stand in that relation to an adverse defendant, under circumstances of very adverse interests. His honor said, he must suppose that *Sir Anthony Hart* did not mean a contingent possibility, but a probable occurrence of mismanagement, and in that case it did appear there were strong grounds for inducing a belief that the suit could not have gone on properly. Here it did not appear that there was any material question of construction likely to arise upon this will, and the circumstance of the bill being filed by the solicitor for the defendant *Sarah Crosier* and her husband was not of much consequence. The bill was so framed as to call upon the defendants who made the application, to account, and two of them had not put in their answers. There was evidently some quarrel between them and the next friend, and before acting upon the authority of *Peyton v. Bond*, he must see a reasonable ground for supposing that in continuing the present next friend, the suit would be improperly conducted. It had been objected that no application had been made for the appointment of a guardian to the infant; but it was not wise to apply for the appointment of a guardian until the property of the infant was ascertained, and it was quite consistent with fair management to wait until the hearing before asking for such an appointment. His honor added that he could not but think the motion had been wrongly conceived. Such a motion should not be made, unless in a case of pressing mismanagement.

Motion dismissed with costs.—*Bedwin v. Asprey*, January 27, 1841.

Queen's Bench.

[Before the Four Judges.]

PLEADING.

In an action on a guarantie in which the defendant had guaranteed to pay a stipulated sum, if certain joint-stock shares should not make up that sum, the declaration alleged generally that the shares were without value—the defendant pleaded that they were not without value: Held, that this plea was too general, and that an order for striking it out was rightly made.

Sir W. Follett moved for a rule to shew cause why an order made by Mr. Justice

Wightman, for striking out a plea, should not be set aside. This was an action on a guarantie given by the defendant to the plaintiff, in consideration of the plaintiff's money on certain shares in the Anthracite Company, and the guarantie concluded with the words "in case the shares did not make up the sum due." The declaration alleged that the shares were of no value, and the defendant proposed to plead that the shares were of value. The parties had gone before Mr. Justice *Wightman*, who struck out this plea. [Mr. Justice *Wightman*.—My reason for doing so was that on the issue raised by this plea, if the shares were only of the value of one farthing, the defendant must have had the verdict, and I did not think that that would meet the justice of the case.] The object of the defendant is to raise the question whether the plaintiff can come on him for the amount secured by the guarantie till the shares have been disposed of, and their value deducted from the sum which the defendant is called on to pay.

Pur Cur.—This is not the proper plea to raise that question.

Rule refused.—*Murray v. Boucher*, E. T. 1841. Q. B. F. J.

PRACTICE.—PARTICULARS OF DEMAND.

A plaintiff is not conclusively bound by the terms of his particulars, and therefore when by mistake he inserts in the particulars as a payment the amount of a returned article, which amount, if actually paid, would have turned the balance against him, the judge may properly leave it to the jury to say whether, in fact, the balance of the whole account is or is not in his favour.

Debt for goods sold and delivered. Pleas, *nunquam indebitatus*, and payment. The cause was tried before Lord *Denman*, at the sittings in London, after last term. The plaintiff proved the delivery of the goods, and the defendant then put in, as proof of his plea of payment, the particulars delivered by the plaintiff. In the particulars the plaintiff had shewn a delivery of goods to the amount of 94*l.* 10*s.* There was credit given for payments made at various times, amounting to 920*l.* 10*s.* The plaintiff claimed the balance. One of the articles thus delivered was a silver tea urn, charged at 84*l.* 16*s.* This had been returned, and was entered in the particulars as a payment of that sum; and the defendant insisted that as these payments, and the deduction of the tea urn, taken together, amounted to more than the sum claimed, the plaintiff must be bound by the terms of his particulars, and therefore, that there must be a verdict for the defendant. The Chief Justice, however, left it to the jury to say whether, in fact, there was not a balance due to the plaintiff; and the jury returned a verdict for the plaintiffs, damages 29*l.* 1*s.* 1*d.*

Mr. *Bayley*, in this term, moved for a rule nisi to set that verdict aside, and for a new trial. As the facts stood, the plaintiffs did not make

out their case. On that proof the defendant was entitled to a verdict on the second issue. The payments made, together with the amount of the returned silver tea urn, exceed the amount of the plaintiff's demand; and on the plaintiff's own shewing, by their own particulars, have been overpaid. There are two cases in point, the first is that of *Kenyon v. Wakes*.^a That was an action for wages, plea, *non assumpsit*. The particulars of demand stated a claim for wages, at 15s. per week, amounting altogether to 148l., and gave credit for payments on account to the amount of 70l. At the trial the defendant put the particulars in evidence, as shewing a payment of 70l.; and the jury having found that the plaintiff was only entitled to wages at the rate of 7s. per week (which destroyed the balance of 78l. claimed by the plaintiff), gave a verdict for the defendant. On motion for a new trial the Court held that the particulars were properly received in evidence as an admission of the payment; and it not having been objected at the trial that they could only be used in reduction of damages, and not in bar of the action, that the verdict ought not to be disturbed. The other case is that of *Eastwick v. Harman*,^b which decided that where a plaintiff gives credit in his particulars of demand for payments, whether made before or after action brought, and goes only for the balance, a plea of payment is to be taken as pleaded to such balance; and if the defendant proves payments to that amount independently of the sums credited in the particulars, he is entitled to a verdict.

Mr. Justice *Patteson*.—I don't see any doubt in the case: the right of action accrues upon the delivery of the goods. It appears that the original bill was for 949l. 10s., it was subsequently reduced, by the payment at various times, to not more than 920l. 11s. But for the difference between that sum and the amount of the original demand, I am of opinion the plaintiff is entitled to recover, notwithstanding the mistake in the plaintiff's particulars, which erroneously include among the payments the amount of an article which was in fact returned but not paid for. The other judges concurred.

Rule refused.—*Lamb v. Micklethwaite*, E. T. 1841. Q. B. F. J.

Queen's Bench Practice Court.

BANKRUPT. — BOND. — BAIL. — RENDER. — SURETY.—1 & 2 VIC. C. 110, s. 8.

If a bond is given pursuant to 1 & 2 Vic. c. 110, s. 8, although it may vary in one word from the conditions prescribed by that statute, the court will construe it according to the intention of the parties, and if the defendant has been regularly rendered before judgment, the court will set aside a ca. sa. which has been issued for the purpose of suing the sureties.

In this case the defendant, who was a trader, had been sued for an amount sufficient to con-

stitute a petitioning creditor's debt. The usual bond was given with sureties required by the 1 & 2 Vic. c. 110, s. 8, where it is proposed summarily to make a trader commit an act of bankruptcy by not paying, or securing the payment of a debt to the petitioning amount. The provisions of the section requires that the condition of the bond shall be "to render himself to the custody of the gaoler of the court in which such action shall have been or may be brought according to the practice of such court, or within such time and in such manner as the said court or any judge thereof shall direct." The condition of the bond actually executed in this case was that if the said W. Parken, his executors or administrators, shall pay such sum or sums of money to the said R. Saunderson, W. Morris, and R. S. G., or one of them, their or some one of their executors, administrators, or assigns as shall be recovered in the said action or in any other action which may have been or shall hereafter be brought for the recovery of the said alleged debt, together with such damages and costs as shall be given in the same, or shall render himself to the custody of the gaoler of the court in which the said action or any other is brought for recovery of the said alleged debt according to the practice of such court or courts within such time and in such manner as the said court or courts or any judge thereof respectively shall direct after judgment shall have been recovered in such action or actions, or shall obtain a legal discharge or release from the said alleged debt, then the present obligation to be void, but otherwise shall stand and remain in full force and effect." The word "or" was thus omitted in the bond, although introduced in the statute after the word "Court." The action, at the instance of the plaintiff, only proceeded until the joinder of issue. Notice of trial was given for the third sittings in Michaelmas Term, and an intimation given that it would be taken as an undefended case. An affidavit of merits was, however, produced on behalf of the defendant, and the cause was allowed to stand over to the adjournment-day, with judgment of the term. Before the adjournment-day arrived an order was made by Mr. Justice *Coleridge* for the render of the defendant, and he was rendered accordingly. Notice was served of the render, but no affidavit of such render was sworn. The defendant's pleas were then withdrawn, and judgment signed. The defendant's sureties then applied to Mr. Justice *Patteson* to obtain an order for the delivering up of the bonds, but his Lordship doubting his authority to do this, declined making any such order. The plaintiff then sued out a writ of *capias ad satisfaciendum*, and lodged it with the sheriff in order to fix the sureties, it being supposed that the render of the defendant in the manner above described was irregular. Notice of the lodging the *capias ad satisfaciendum* was accordingly given to the sureties. On their behalf and on that of the defendant, a rule was obtained by *C. Cresswell*, calling on the plaintiff to shew cause why proceedings on the

^a 2 Mee. & Wels. 764.

^b 6 Mee. & Wels. 13.

capias ad satisfaciendum should not be stayed, and the defendant discharged out of custody.

Martin shewed cause against this rule, and contended that whatever might be the language of the 8th section of the statute in question, as to the form of the bond required by it, it was immaterial, as the present case must depend on the language of the bond itself. The word "or" having been omitted in the bond, whether accidentally or intentionally, could make no difference in the construction which the Court would put on it. The bond being read as it now stood, clearly required that the render should be made "after judgment recovered." Here, however, the render had taken place long before even the pleas were withdrawn. The condition of the bond had not been fulfilled. Should the Court, however, be of opinion that the bond might be construed as if the word "or" was introduced into it, and therefore that a render according to the course and practice of the Court would suffice, though before judgment signed, still the render had been made contrary to that practice. It was true, that notice of the render had been given, but no affidavit of that notice of render had been made; and that, according to the practice of the Court, was required, in order to constitute the render valid. Not having been made, the Court could not consider the render regular, and therefore the proceedings of the plaintiff in suing out the *capias ad satisfaciendum* were perfectly regular. No power to give relief to these sureties was vested in the Court by the 1 & 2 Vict. c. 110, s. 8, as was the case with respect to bail, under the statute of 4 Ann. c. 16, s. 20. The plaintiff had therefore a right to proceed, and the Court had no power to interfere by way of injunction. The plaintiff had no objection, if the Court thought it right, to the discharge of the defendant out of the custody of the marshal, in which he was at present, the object being to proceed against the sureties.

Cresswell supported the rule, and contended that the render by the sureties of the defendant was clearly regular, and the latter being legally in custody, pursuant to a regular committitur, a *capias ad satisfaciendum* against him was clearly illegal, and ought to be set aside. With respect to the bond and the omission of the word "or," no ground whatever was afforded by that omission for contending that the render was irregular. The statute prescribed certain conditions to be introduced into the bond provided by the 8th section, and the intention of the parties clearly was that the bond in the present case should contain the prescribed conditions. The court would therefore construe the bond in conformity with those intentions, and would not, from the mere omission of the word "or," frustrate the intentions of the legislature. If so construed, all that was required was, that the render should be according to the practice of the court. It was perfectly clear that the render in the present case was so made; a regular committitur was procured, and notice of the render given; as to

the affidavit of the notice, no such affidavit was required in order to make the render good. That was only requisite as a preliminary for obtaining the bail-piece from the office. The plaintiff, therefore, had no right to issue a *capias ad satisfaciendum*, and having issued it, that constituted an irregularity which the court would interfere to set aside. For these reasons, the present rule ought to be made absolute.

Cur. adv. vult.

Coleridge, J.—This was a rule for setting aside the *ca. sa.* and staying all proceedings on the bond, under the following circumstances:—The bond had been given under the 1 & 2 Vict. c. 110, s. 8, before the trial, and an *ex parte* order was obtained to render the defendant in discharge of his sureties; the render was made and notice given, whereupon the pleas were withdrawn and final judgment signed, on which the *ca. sa.* was issued for the purpose of fixing the sureties.

Cause was shewn upon several grounds, one of which was disposed of in fact, namely, the alleged want of a *committitur*, which appeared upon the affidavit to have been duly made. Then it was said, that the render had not been made in pursuance of the condition of the bond. Upon referring to which, it appeared that by inadvertence the word "or" had been omitted, and instead of being conditioned to render, &c. according to the practice of the Court, or within such time and in such manner as the said Court or any Judge thereof shall direct after judgment shall have been recovered in such action, the condition ran with the same words, omitting only the word *or*. Upon this, it was argued that a render before judgment was irregular, for that the words "after judgment," overrode the whole sentence, so that no render could be made until after judgment. In *Ouston v. Coates*, 10 Ad. & El. 197, the Court decided that the words "after judgment" do not in the statute apply to a render, "according to the practice of the Court." According therefore to the spirit of that decision, the statute divides at the disjunctive "or," and the latter branch becomes insensible, if the disjunctive "or" be omitted. As then this render was before judgment, if it were according to the practice of the Court, which for the purpose of the present objection I may assume it to be, I think I am quite at liberty to reject as superfluous the words which follow "the practice of the Court" from the condition, and so this objection will fail. But then it was said that there had been no affidavit of the notice of the render, and that by R. G. 1 Ann. R. 2, such affidavit was a necessary preliminary to the discharge of the bail—and without it, the render was void. This point came before the Court in the case of bail in *Rea v. The Sheriff of Middlesex*, 1 Chit. Rep. 360, and the Court held "that the affidavit was necessary only in order to get the bail-piece out of the office, and was not necessary to make the render complete, so as to discharge the bail." But in cases like the present, there is no bail-piece, and I am therefore authorised

in saying that the affidavit is not necessary for any purpose; and although the tender is to be according to the practice of the Court, it is clear that these words must receive a liberal interpretation; a literal following of the practice in bail cannot be required in all particulars, and it is rather by way of analogy than in exact detail that compliance at all is required. It was, however, urged, that the *ca. sa.* being sued out to fix the bail was regular, because although the defendant was in custody, he was not so by any act of the plaintiff. But as the object of a *ca. sa.* against the principal, is to give the bail notice, and where the principal is already in the sheriff's custody, although at the suit of another person, it has been decided that the plaintiff cannot have a return of *non est inventus* to it, it seems to me, applying the principle of those decisions to the present case, that this *ca. sa.* was unnecessary and irregular—the defendant having been already committed to prison in this very cause, at the instance of the sureties or bail—and with notice thereof to the plaintiff. This rule will therefore be absolute for setting aside the *ca. sa.*, and staying all proceedings on the bond. The rule also extended to the discharge of the defendant out of custody as to this action, to which no opposition was made.

Rule absolute with costs.—*Suunderson v. Parker*, H. T. 1841. Q. B. P. C.

LAW BILLS IN PARLIAMENT.

House of Lords.

- For holding Petty Sessions and Summary Trials.
[In Committee.] Earl Devon.
Drainage of Buildings. [In Select Committee.]
Turnpike Acts Continuance. [Passed.]
To limit the Criminal Jurisdiction of the Quarter Sessions. [For 2d reading.]
For rendering a Release as effectual as a Lease and Release. [For 2d reading.]
Tithes Recovery. [For 2d reading.]
Double Costs, &c. [For 2d reading.]
Annual Indemnity. [For 2d reading.]

House of Commons.

- For facilitating the administration of justice (in Chancery), No. 1. Attorney General.
[In Committee.]
To facilitate the Administration of Justice in the House of Lords and Privy Council, No. 2. Sir E. Sugden.
[In Committee.]
County Courts. Mr. F. Maule.
[To consider Report.]
Bankruptcy, Insolvency, and Lunacy.
[In Committee.]
To remove objections to the admission of evidence on the ground of interest.
[In Committee.] Mr. C. Buller.

To allow Writs of Error in *Mandamus*.

- Sir F. Pollock.
Poor Law Amendment. [In Committee.]
For the Registration of Parliamentary Electors.
[In Committee.] Lord John Russell.
For the better regulation of Railways.
Mr. Labouchere.

County Coroners' Election. Mr. Packington.
[In Committee.]

Drainage of Lands. Mr. Handley.
[In Committee.]

Copyhold and Customary Tenures.
[Committed *pro forma*, and reprinted.
Further consideration of Report on
April 28.] Mr. Hope.

Administration of Justice in Boroughs.
[In Committee.] Attorney General.

To facilitate the Transfer of Real and Personal Property held in trust for Charitable Purposes.
Mr. James Stewart.

[In Committee.]
For the Enrolment of Burgesses.
[For 2d reading.]

Designs Copyright. [For 2d reading.]
Tithes Recovery. Captain Pechell.
[Passed.]

To appoint a Public Prosecutor.
[For Select Committee.] Mr. Ewart.

To exempt Tithes from Parochial Assessments.
Mr. Hodges.

Middlesex Sessions. [In Committee.]
County Bridges. [In Committee.]

Punishment for Offences against the Person.
[In Committee.] Lord J. Russell.

Punishment for Embezzlement.
[For 2d reading.] Lord J. Russell.

To amend the Law of Sewers.
[In Committee.]

Banking Copartnerships. [Passed.]


THE EDITOR'S LETTER BOX.

A. need not be examined a second time. He must give the usual notice of admission, and apply to a Judge for a fiat.

The statement of the Distribution of an Intestate's Estate in the province of York is acceptable.

We refer H. G. to the articles on the Law of Marriage in Vols. 19 & 20.

The communications of J. B. W.; G. S.; "Amicus;" "Civis A.;" and "Kent," are unavoidably deferred.

 An Index to the Statutes effecting Changes in the Law during the last ten years, and to the 4000 Cases reported, and the Points decided in each Case, with the other Principal Matters in the first Twenty Volumes of the Legal Observer,—has just been published, and may be had (by order) of all Booksellers.

The Legal Observer.

SATURDAY, MAY 8, 1841.

— “ Quod magis ad nos
Pertinet, et nescire malum est, agitamus.

HORAT.

THE PROGRESS OF LAW REFORM.

Of the various bills, of which we have told the weekly progress during the present Session, having a reform or alteration in the law for their object, the only important measures which seem likely to pass are the Chancery Reform Bill and the Copyhold Enfranchisement Bill. The first of these has now passed through Committee, and as it contains the compensation clause to Mr. Scarlett,—which is, however, to cease on his becoming a peer,—we do not think there will be any difficulty in its passage through the Upper House. The Copyhold Bill went through Committee on Wednesday, and the Report stands for Monday next. It has now, therefore, so few steps to go through, that we do not think that any untoward event can prevent its passing; and thus, after three years' disappointment, we believe that the friends of the measure may at last rejoice in its safety. We understand, however, that some alterations were made in Committee. The Commission is cut down from ten to five years; the Commissioners are to have power to settle all disputes not relating to mines or minerals, or to boundaries; the custom of gavelkind, so far as it exists in the county of Kent, is not to be affected; and several other minor alterations have been made.

The Punishment of Death Bill came on on Monday, and much discussion took place on it. The first point discussed was, the changing the punishment for setting fire to Her Majesty's ships, arsenals, &c., from death to transportation. The present punishment of death was continued by a majority of 122 to 110. Next came the question of the removal of death from rape and unnatural crimes, and this was con-

tinued by a much larger majority, 123 to 61. Then the various kinds of *attempts* to murder came under discussion:—administering poison, wounding with intent to murder, burglarious breaking any house with intent to murder, &c. These offences are still to be punishable with death. Altogether, the discussion on this subject has ended by leaving the penal law very nearly as it was at its commencement, and we are inclined to think that until some further experience, this is the wiser course.

The Coroner's Bill occupied the whole of Wednesday night, and probably will pass this Session. The allowances to the coroner have very properly been increased to eighteen pence a mile one way on the whole, over and above the fees. This we consider only to be an act of bare justice to this respectable officer.

The Lease and Release Bill was, on the motion of the Lord Chancellor, read a second time on Thursday, and will, no doubt, soon become the law of the land. On the same evening, on a question from Lord Ellenborough, the Lord Chancellor stated that the Orders for making a change in the practice of the Court of Chancery were in a state of forwardness, but he could not state the exact time when they would be laid before Parliament.

The County Courts Bill has been further postponed till the 17th instant. We understand that considerable alterations will be made in the details of the bill before it proceeds further, and the probability is, that it will not pass this session.

The votes of the House shew that the Lord Chancellor and the Master of the Rolls will give evidence before the committee on the removal of Courts, and so will the Vice Chancellor. They are all in favour of the change.

C

THE
LAW OF JOINT STOCK COMPANIES.

JOINT STOCK BANKS.

WE have very recently stated, at considerable length, the statutes relating to joint stock banks, and the cases decided on them, 21 L. O. 129, 273; and in particular those which relate to actions against the public officer appointed under 7 Geo. 4, c. 46, and 1 & 2 Vict. c. 96. It has been recently held, that these statutes do not apply to demands made by one or more members of a partnership against the other members of that partnership. Thus, where *A.* filed a bill against the public officer of a joint stock bank, alleging that he had been induced to purchase 500 shares in the bank by the fraudulent representations made by the directors in their reports as to the prosperous state of the company's affairs, and praying for a declaration to that effect, and that the purchase might be declared void as between the company, and that the latter might repay him his purchase money. Sir *L. Shadwell*, V. C. said—"There has been a legislative interpretation put by the act 1 & 2 Vict. on the effect of the act of 7 G. 4, though there are words in the 7 G. 4, which might, I think, have made it questionable at least whether the act of Geo. 4, did not itself comprehend the very cases which are provided for by the 1 & 2 Vict. However, the act of the 1 & 2 Vict., after reciting the act of the 7 Geo. 4, and an act of the 6 Geo. 4, and that it was expedient those acts should be amended, proceeds to enact: "that any person now being, or having been, or who may hereafter be, or have been, a member of any copartnership now carrying on, or which may hereafter carry on the business of banking under the provisions of the said recited acts, may at any time during the continuance of this act, in respect of any demand which such person may have, either solely or jointly with any other person, against the said copartnership, or the funds or property thereof, commence and prosecute, either solely or jointly with any other person (as the case may require), any action, suit, or other proceeding at law or in equity, against any public officer appointed, or to be appointed, under the provisions of the said acts, to sue and be sued on the behalf of the said copartnership; and that any such public officer may, in his own name, commence and prosecute any action, suit, or other proceeding, at law or in equity, against any person being or having been a member of the said copartner-

ship, either alone, or jointly with any other person against whom any such copartnership has or may have any demand whatsoever; and that every person being, or having been a member of any such copartnership, shall either solely or jointly with any other person (as the case may require) be capable of proceeding against any such copartnership, by their public officer, and be liable to be proceeded against, by or for the benefit of the said copartnership, by such public officer as aforesaid, by such proceedings, and with the same legal consequences as if such person had not been a member of the said copartnership, and that no action or suit shall in anywise be affected or defeated by reason of the plaintiffs or defendants, or any of them respectively, or any other person in whom any interest may be averred, or who may be in anywise interested or concerned in such action, being or having been a member of the said copartnership; and that all such actions, suits, and proceedings, shall be conducted and have effect as if the same had been between strangers." I look upon this as a legislative declaration that the particular cases which were provided for by 1 & 2 Vict., were not provided for by the 7 Geo. 4. But it is perfectly plain that the act of the 1 & 2 Vict., though it meant to give relief in a case where one member of a partnership might, either solely or jointly with another person, have a demand against the partnership, or *vice versa*, the partnership might have a demand against a member of the partnership, either solely or jointly with some other person, no part of it can, by any construction, however forced, be made to provide for determining a question between one member of a partnership as such, and the other members of the partnership as such. In my opinion, therefore, there is no ground whatever for making Connell a party to this suit in the character of public officer of the company, thereby representing the whole company." *Seddon v. Connell*, 10 Sim. 58. In the same case, *A.* having filed a bill against a company, and also against some of the directors of the company, praying relief against the company, and if he should be held not to be entitled to relief against the company, then praying relief against the directors: it was held that the bill was demurrable.

Some other points have been recently decided on this subject. Two of three partners, against whom a joint fiat had issued, were members of a joint-stock

banking company, the firm of the three being jointly indebted to the banking company at the time of their bankruptcy: Held, that the banking company could prove against the joint estate of the three. *Ex parte Law, in re Hague*, 1 Mont. Dea. & De G. 16. A creditor of a joint-stock banking company may sue out a fiat against any individual member of the company, without proceeding in the first instance against the public officer of the company, under the provisions of the 7 Geo. 4, c. 46. The Court of Review will not stay the advertisement, after adjudication, unless, upon the inspection of the proceedings, it finds the depositions insufficient, on the face of them, to establish the bankruptcy. *Ex parte Wood, in re Wood, Ibid.* 92. Where a party held shares in a joint-stock banking company for a period of two years, and received successively two years' dividends on his shares: Held, that this was not sufficient to constitute a trading as a banker. *Ex parte Wyndham, in re Byroms, Ibid.* 146.

NOTES ON EQUITY.

PROCEEDING IN TWO COURTS.

In *Mocher v. Reed*, 1 Ball & B. 318, Lord Manners, I. C., said, "after the plaintiff has obtained a decree to account, he is not at liberty to dismiss the bill. Having got the relief he prayed, his election is made, and he cannot afterwards proceed at law." In *Wilson v. Wetherherd*, 2 Mer. 406, Sir W. Grant, M. R. (acting on this case) after a decree to account, granted an injunction on the application of the defendants to restrain the plaintiff from proceeding at law in an action commenced by him, pending the suit in Equity. See also *Booth v. Leycester*, 1 Keen, 579, and 3 Myl. & C. 458; *Edgcombe v. Carpenter*, 1 Beav. 171. These cases were recently acted on by Lord Langdale, M. R., in a case in which the parties having instituted a suit in the Court of Chancery, and having obtained a decree for an account, commenced proceedings in the Court of Session in Scotland, against several of the defendants. His lordship said, "The cases which have been cited, *Mocher v. Reed*, and *Wilson v. Wetherherd*, and the case of *Booth v. Leycester*, as it was decided by the Lord Chancellor, sufficiently determine that the Court has jurisdiction to interfere in a case of this nature; and it is therefore reduced to this question whether this is a proper question in which to exercise that jurisdiction? I do not mean to

express any opinion whatever upon certain very important points which have been raised here. I do not mean to say that a plaintiff can in no case, pending proceedings under a decree, be permitted to pursue any auxiliary remedy in a foreign country. I do not mean to say that he cannot avail himself in any case of the proceedings which may be adopted in a foreign country, for the purpose of attaching the property of his debtor, or of obtaining security thereon; nor do I say that, pending proceedings in the master's office, he may not in any case be permitted to adopt proceedings in a foreign country, for the purpose of preventing a prescription running there, which would deprive him of every remedy in that country. There may, I conceive, be special circumstances under which a party may be at liberty to proceed in a foreign country, for all or any of those purposes; but I am clearly of opinion that a party ought first to apply to the court for leave to adopt such proceedings, if special circumstances do exist, as if the defendants have no available property in this country, or the defendants in this country are insolvent, or in short, where there are any other reasons why the remedy should be pursued in another country." *Wedderburn v. Wedderburn*, 2 Beav. 214.

AMENDING AFTER INJUNCTION.

WHERE an injunction has been granted on the merits, a motion to amend without prejudice to the injunction is a motion of course, but where it has issued on account of delay, notice of the motion must be given, and the proposed amendments must be stated. *Pratt v. Archer*, 1 Sim. & Stu. 433. In a late case, the plaintiff obtained a special injunction, and the defendants subsequently filed a general demurrer, after which, and before the demurrer had been set down, the plaintiff obtained an order of course to amend "without prejudice to the injunction," and this was held to be regular. It was held in the same case that after a demurrer the plaintiff may, before it has been argued, obtain an order to amend; the only question is, what costs he is to pay? and that depends upon whether the demurrer has been set down or not. *Warburton v. London and Blackwall Railway Company*, 2 Beav. 253.

APPORTIONMENT ACT.

By stat. 4 W. 4, c. 22, (printed 8 L. O. 161) s. 2, it is enacted that all rents, services reserved on any lease by a tenant in

fee, or for any life interest, or by any lease granted under any power, and all rent-charges and other rents made payable or coming due at fixed periods, shall be apportioned, &c. Lord *Cottenham*. C., has held that this act does not apply to rents payable by tenants from year to year, which have not been reserved by an instrument in writing. "I am clearly of opinion that the statute does not apply to this case. First, it enumerates the most worthy subject, viz. rent service, that is, rents reserved under leases; then it proceeds to give an enumeration of various other subjects, concluding with a general clause, large enough to embrace every kind of payment coming due at fixed periods, and it requires that they should be under an instrument executed after the passing of the act. But there was no intention on the part of the legislature to make any distinction between the several matters which are the subject of the enactment, as to whether the payments should or should not be under an instrument in writing. Even in the case of the least worthy of the subject-matters which the section enumerates, it was intended that the instrument creating or evidencing the payment should be in writing; and, *a fortiori*, that was so as to the most worthy, the only question being as to the time at which the instrument was so to be executed." *In re Markby*, 4 M & C. 484.

NEW BILLS IN PARLIAMENT.

TURNPIKE ROADS.

A BILL has been brought in to remove doubts relating to tolls, and to enact that no toll shall be demanded or taken for any horse, ass, sheep, swine, or other beast or cattle of any kind whatsoever, or of any waggon, cart, vehicle, or other carriage of any kind whatsoever, which shall only cross any turnpike road, or shall not pass above one hundred yards thereon.

STAMPS ON LAW PROCEEDINGS.

This Bill recites that by 55 Geo. 3, c. 184, a stamp duty of two shillings and sixpence was imposed (amongst others) upon affidavits to be filed, read or used in any of the Courts of Law or Equity at Westminster, or of the Great Sessions in Wales, or of the Counties Palatine of Chester, Lancaster, and Durham, or before any Judge or Master or other officer of any of the said Courts: And that by 5 Geo. 4, c. 41, it was (amongst other things) enacted, that from and after the 10th October, 1824, the stamp duty payable upon, for and in respect of affidavits to be filed, read or used in any action or suit in any of the said Courts of Law

or Equity at Westminster, or of the Great Sessions in Wales, or of the Counties Palatine of Chester, Lancaster, and Durham, or before any Judge or Master or other officer of any of the said Courts, should cease and determine: And doubts have been entertained whether, under the said last-mentioned statute, the stamp duty of two shillings and sixpence imposed upon affidavits by and under the said first recited act was repealed, and had ceased and determined in regard to all affidavits whatsoever or whosoever to be filed, read or used, or only in regard to affidavits to be filed and used in any action or suit: And that it is expedient and necessary that such doubts should be forthwith put an end to and determined;

It is therefore proposed to be enacted and declared, that the said stamp duty of two shillings and sixpence imposed upon affidavits under and by virtue of the said first-recited act, shall be adjudged, deemed and taken to have been repealed, and to have ceased, determined and been put an end to from the time of the passing of the said second-recited act, upon all affidavits whatsoever, whether to be read, filed or used in any action or suit, or otherwise, howsoever or whosoever to be read, filed or used; and that all affidavits which shall or may have been read, filed or used since the passing of the second-recited act in any Court or place, or before any Judge or jurisdiction whatsoever, without being stamped according to the provisions of the said first-recited act, shall be adjudged, deemed, held and taken to have been lawfully and rightfully read, filed and used, to all intents and purposes whatsoever, and as if no stamp duty had ever been imposed upon such affidavits by the first-recited act, or any other act or statute whatsoever.

POINTS IN COMMON LAW PRACTICE. BY QUESTION AND ANSWER.

No. V.

SUING IN ANOTHER'S NAME.

- 81.* Can a *cestui que trust* enforce his rights at law without the consent of his trustee?
82. Can the plaintiff on record, as the trustee of another, be examined as a witness in the cause; and if not, state the reason?
83. Can the immediate owner of the inheritance to an estate, his title thereto being undisputed, after tendering an indemnity to the trustee of an outstanding term, bring an ejectment on the demise of the latter?
84. If there be any dispute about the inheritance as to the right heir, what may the trustee do?
85. Where the landlord of a commonable tenement offered an indemnity to his tenant, and commenced an action in the name of the latter for an encroachment on the com-

* Continued from Vol. 21, p. 421.

- mon by enclosure, what would the Court do if the tenant released the action?
86. Can a landlord sue in the name of his tenant without his consent; and if so, in what case?
 87. Can a landlord defend an ejectment brought in the tenant's name without his authority, on any and what conditions?
 88. What authority is implied by assigning a debt to another?
 89. Can a debtor, after action brought and notice of assignment, take a release from the assignor or pay him the debt?
 90. A married woman living apart from her husband, under sentence of separation, with alimony, brings an action in her husband's name for a trespass: can the proceedings be stayed if the husband make an affidavit that the action was commenced without his authority; and if so, state the reason?
 91. In an action brought on a bail-bond, in the name of a husband and wife, for a note given to the wife, the parties having been separated for many years; but the husband having in ignorance signed an authority to bring the original action: can the proceedings be stayed on the ground that the husband does not consent to the present action?
 92. Will the Court interfere to stay proceedings between co-plaintiffs on the record; and if so, in what case?
 93. Can one partner, in suing for partnership debts, sue in the name of the firm?
 94. If one out of two or more trustees, assignees, or executors, sue in the name of the others, how can one of these put a stop to the proceedings?
 95. In what case can the other or the others not put a stop to the proceedings?
 96. After a dissolution of partnership, on the terms that one of the partners should collect and discharge all claims on the firm, can a debtor, who knew these terms, obtain a release from the other partner?
 97. How can a release by the plaintiff or one of the plaintiffs on record be avoided?
 98. Where creditors sue in their debtor's name, and the defendant produces in evidence a receipt from the nominal plaintiff, given after the assignment of the debt, what would be the effect of such evidence?
 99. If two out of four executors sue for a debt, can the other two release the defendant?
 100. If the nominal plaintiff release, how can he be proceeded against?

ADMISSION OF PAROL EVIDENCE TO EXPLAIN DOCUMENTS.

The general rule of law upon this subject is well established, that where the parties to a contract have embodied the evidence of their intention in a document, that evidence is taken to be the *sole* index of the intention; and all extrinsic evidence to vary the agreement is ex-

cluded. No argument can be necessary to shew the sound sense of the rule. I have also always understood that the rule is applicable, whether the agreement be by writing under seal, or without that formality; and with the exception of those presently mentioned, I am not aware of any authority which sanctions a distinction between a deed and an unsealed agreement.

To the general rule there is this qualification; that if a term used in a written agreement have a peculiar local sense, evidence of the customary understanding in the locality of the agreement is admissible. As an illustration I may mention the admission of evidence to explain what the word "thousand," used in a covenant, meant, in that part of the country where the lease was made: "*twelve hundred.*" *Smith v. Wilson*, 3 B. & Ad. 728. The agreement in that case being *under seal*, confirmed my notion of the rule applying as much to a deed as an unsealed agreement.

Impressed with these principles, I should not have hesitated in answering the following question, whether parol evidence was admissible to shew that the parties to a demise *under seal* lived in a part of the country where by the custom the word "Michaelmas" was understood as *Old Michaelmas*; and I should have said that the word "Michaelmas" used in the deed might be thus governed in its meaning by the evidence of such custom. There are, however, several cases which appear to contain some authority against me, but after a very attentive consideration of them all, I confess I cannot feel myself bound to acquiesce in what I believe to be the prevailing notion of the profession on this subject—that such evidence is not admissible where the demise is by *deed*, although it is where the demise is by an *unsealed* writing. The doctrine, as far as I can see, is based only upon the distinction of a seal. I cannot discover one reason in support of it; and I submit the authorities I will now examine are not of sufficient weight to uphold what appears a violation of principle and good sense.

The first case is *Forley v. The Mayor of Canterbury*, 112. It was a *Nisi Prius* decision of Lord Kenyon, with which, however, I fully concur. There he permitted evidence to be given that by the custom of Kent a tenancy from *Michaelmas* generally was considered to be *Old Michaelmas*. I believe it does not appear whether the holding was there by *deed*. It is therefore clearly no authority against me, be that fact as it may; and the omission of that fact would in itself appear to shew its unimportance.

Then followed *Doe v. Spicer v. Lea*, 11 East, 312. There a tenant who held a farm by *parol* from *Old Michaelmas*, for about three years, took a lease under seal of the same farm for a term of thirteen years, to hold from the feast "of St. Michael;" and after the expiration of that lease the tenant held on without coming to any new agreement. Mr. Justice *Chambre* held that the tenant was concluded by the terms of the lease, which was a holding from

New Michaelmas, and that parol evidence was not admissible to shew *Michaelmas* was meant by the parties as *Old Michaelmas*, the Court supported the ruling. The *decision* in this case has no reference to the doctrine I am endeavouring to impugn; for the evidence rejected was that of the *prior holding* by the same party under an express parol contract from *Old Michaelmas*; not evidence of the *custom* of that part of the country. No attempt to introduce this latter sort of evidence was made; nor does it any way appear such a custom prevailed. The only semblance of authority to be extracted by the most ingenious, is the question of the Court when *Forley v. Wood* was cited to shew evidence of the custom of the country was admissible, "whether the holding there were by *deed*." I cannot, in the absence of reason, attach weight to a mere question thus lightly asked, particularly when the subject is not further alluded to. The palpable difference between the cases is, that in one the evidence admitted was of a custom; in the other the evidence rejected was anterior acts of the same parties. This distinction is not mentioned, because the counsel for the opposite party were not heard.

The next case was *Doe d. Hall v. Benson*, 4 B. & Ald. 588. There a parol letting was from "Lady-day." Evidence that the *general custom* of the country in reserving rents was to reserve them from *Old Lady-day*, was admitted, and the Court supported the verdict. The *decision* there upholds *Furley v. Wood*, and is no more against me; and that is not at all. It is true the plaintiff's counsel, alluding to *Doe v. Lea*, says, "the letting was by *deed*, which distinguishes that case from the present," and they overlook the more satisfactory distinction I have mentioned, if it really exist; but I attach no weight to the omission, as I think the question put by the Court in *Doe v. Lea* likely to induce it. It is also true that *Abbott, C. J.* contents himself with the same distinction, remarking, "Now reading the deed in that case (*Doe v. Lea*), as lawyers, the Court could not but consider "Lady-day there as meaning *New Lady-day*." *Holroyd, J.*, repeats the remark. To shew *Doe v. Lea* was not very accurately looked at by either, I may observe, that both are wrong in their statements as to the holding. Both of those learned judges also agree in stating the reason of the decision in *Doe v. Lea* to be, that evidence is not admissible to explain a *deed*. That the evidence there offered was not admissible, I concede; but that the evidence of a *custom* is admissible, *Smith v. Wilson* expressly decides.

Before I dismiss *Doe v. Benson*, I must mention Mr. Justice *Bayley's* silence upon the distinction I wish to explode; he puts the rule thus, "In common parlance it is an equivocal term; where, therefore, there is a custom in the country respecting it, I think it ought to be considered as used *prima facie* consistently with that custom." I cannot read that expression without thinking that learned judge withholds countenance from a doctrine which regulates a person's meaning by his seal or its absence.

Den d. Peters v. Hopkinson, 3 Dow. & Ry. 507, follows. There the defendant, by an agreement not under seal, agreed to take a farm "now occupied by Clark, and which the said Clark is about to quit at Lady-day next, when the said defendant is to enter." The dispute was, whether Lady-day meant *Old* or *New*. Evidence was admitted to prove that the *real understanding* between the parties was, that the tenancy should commence at *Old Lady-day*." It was objected, first, that the holding being from Lady-day, must be taken to be according to the new style, especially as no custom of the country to the contrary was shewn, or indeed existed; and second, that as the holding was by *deed*, parol evidence was inadmissible. A rule was refused on either ground. The *decision* in this case is not that evidence of a custom is inadmissible to explain a deed, for the letting was not, as stated by counsel, by *deed*, and consequently it is not against me. The Court said "neither of the objections is tenable; as to the first, the defendant was to enter when his predecessor was to quit. That was at Lady-day, and it was proved that the parties understood and intended that Lady-day should mean *Old Lady-day*. As to the second, the tenancy here cannot be said to be by deed, because the instrument is a mere written agreement, not under seal; and therefore, upon the authority both of *Doe v. Benson* and *Furley v. Mayor of Canterbury* [should be *Wood*], the parol evidence was admissible."

In truth, this case of *Den v. Hopkinson* has no relation to my argument, except the ambiguity of the word "therefore." I would also remark that there is great obscurity in the report as to what evidence was received. If the "real understanding between the parties" points to the defendant's tenancy commencing at the termination of his predecessor's, and that ended at *Old Lady-day*, the case of *Doe v. Lea* furnishes a dictum which will support it; but if it is to be considered that the evidence admitted was in truth mere declarations of the parties as to what they meant, the case may require consideration before it can safely be adopted as an authority. Be it as it may, it is alike destitute of reason and weight against my position.

In *Smith v. Walton*, 8 Bing. 235, an action of replevin, the defendants, in their avowry, alleged a holding under defendant Walton, at a rent payable half yearly, at Whitsuntide and "Martinmas." The plaintiff pleaded in bar to that avowry *non tenuit modo et forma*. The jury found the rent was payable at *Old Martinmas*; and the question for decision was, whether the verdict of the jury should be entered for the defendants. This could only be determined by a reference to the issue raised; and inasmuch as the defendants had stated the rent to be payable at "Martinmas," it was clear the finding of the jury did not support him. I do not question that in legal contemplation "Martinmas" means the new style, and therefore I concur in the result of *Smith v. Walton*. It would, in truth, have been use-

less to cite it, were it not that the Court, in judgment, state a distinction to exist between a holding by deed and by parol, as respects the admissibility of extrinsic evidence to shew whether the old or new style were meant. I have endeavoured to shew that no such distinction is warranted by the cases generally thought to support it; that *Forley v. Wood* and *Doe v. Benson* conclusively establish the admissibility of evidence of local understanding in the case of a holding under a parol or unsealed agreement; that *Doe v. Lea* did not decide such evidence inadmissible in the case of a holding under seal; and that *Smith v. Wilson* proves an ordinary term, if used in a deed, may be controlled by evidence of local usage and understanding.

J. B. W.

REMARKABLE WILLS.

No. I.

JAMES WOOD, OF GLOUCESTER, 1834.

We think it will be an appropriate addition to the various series of papers—biographies—trials—antiquities, &c.—which we have collected for the Legal Observer, if occasionally we bring to the notice of our readers, the most remarkable or curious wills which have been made in ancient and modern times. We shall commence our testamentary collection with the will of James Wood, the eccentric banker of Gloucester. Our brethren are of course well aware of the points in issue, and it will be sufficient to transcribe the documents in question. The first paper is called "*Instructions for the will*;" the second is *the will* (if will it can be called); and the third is the *codicil*, sent anonymously by the post to one of the legatees named in it, with a memorandum in pencil. The codicil was nearly torn through in two places, and one corner of it was burnt off.

Instructions for the will of me James Wood Esq of Gloucester.

I request my friends Alderman Wood of London M P John Chadborn of Gloucester Jacob Osborne of Gloucester and John S. Surman of Gloucester to be my executors—and I appoint them executors accordingly—and I desire that they will take possession of and retain to themselves all my ready monies securities & personal estate, subject to the payment of my just debts and such legacies as I may hereafter direct—and with respect to my real estate I shall dispose of the same to such persons and in such parts as I shall by any writing

Indorsed herein direct. Witness my hand this 2 December 1834.

James Wood

I James Wood Esq do declare this to be my will for disposing my estates as directed by my instructions.

I declare my wish that my executors shall have all my property which I may not dispose of—And that all my estates real & personal shall go amongst them and their heirs in equal proportions—subject to my debts and to any legacies or bequests, of any part thereof, if any, which I may hereafter make—In witness whereof I have to this my last will set my hand this 3 December 1834.

James Wood.

Signed and published
by the said testator
as and for his will
in our presence

Ann Lewis
Edw^d Swann
William Veale

In a codicil to my will I gave the Corporation of Gloucester £140,000 In this I wish my executors would give £60,000 more—to them for the same purpose as I have before named I would also give to my friends Mr Philpotts £50,000—and Mr Geo^e Council £10,000 & to Mr Tho^s Helps Cheapside London £30,000 & Mrs Elith Goodlake mother of Mr Surman & to Tho^s Wood Smith Str Chelsea each £20,000—and Sam^l Wood Cleveland St Mile End £14,000—and the latter gent^l family £6,000—and I confirm all other bequests & give the rest of my property to the exec^s for their own interest

Gloucester City Old Bank
July 1835

James Wood.

The enclosed is a paper saved out of many burnt by parties I could hang The pretend it is not J Wood's hand many will swear to it They want to swindle me Let the rest know.

We shall notice the construction which the Judicial Committee may put on these papers under the appeal now pending before that tribunal.

SELECTIONS FROM CORRESPONDENCE.

ABOLISHING LEASE FOR A YEAR.

Many solicitors have for some years past been in the habit of inserting the parcels of a conveyance in the lease for a year, and by annexing that deed to the release, and referring

to the parcels in the release shortly, they have saved their clients an expense which they will now be unable to do. Thus, in the case of a small conveyance, where economy is an object, to bring the conveyance under thirty folios, it can be easily accomplished by inserting the parcels in the lease for a year; but if the lease for a year duty is to be added to the release, and no extension of folios allowed, the consequence will be that a conveyance of small property will require two duties by exceeding thirty folios, viz: an *ad valorem* on the purchase and a progressive duty on the same, and also the lease for a year duty; thus instead of the public being benefited by abolishing the lease for a year, they will be subjected in small purchases, and where expense is an object, to greater expense, and the profession will be charged with extravagance in the transmission of small property, and still have to pay the stamp on the lease for a year, without any remuneration for the outlay.

This will occur constantly on small conveyances of land for building purposes, now of daily occurrence, — and the solicitor who now frequently spends hours in curtailing a draft so as to bring the same under thirty folios, — will be absolutely unable, as heretofore, to serve his client. KENT.

[The proposed act is only permissive. Parties may still use the lease for a year, where it is advantageous so to do. ED.]

STUDENT'S CORNER.

TENANT FOR LIFE.—APPOINTMENT.

A. B., at p. 441, Vol. 21, is at a loss to decide as to what interest the assignees of a bankrupt take in a portion appointed to the bankrupt subsequent to his obtaining his certificate, under a power of appointment "*among children*," and where, in default of appointment, the fund is directed to be divided equally. The general rule on the subject is, that all the property of the bankrupt, real and personal, in possession, remainder, or reversion, or in action, to which he was entitled at the date of the act of bankruptcy or afterwards, is vested in the assignees by virtue of their appointment. (Archbold, p. 175.) The question therefore is, was this a vested interest at the time of the bankruptcy? I apprehend so, and that it passed to the assignees *ut supra*: first, because in a power to appoint "to all and every the child and children," or "unto and amongst several objects," every one must have a share, (Sugden on Powers, 6th ed., Vol. 1, p. 561): so that the child's interest was vested either way, subject to an illusory appointment by virtue of the 1 W. 4, c. 46. Even a possibility of right will pass. As, for instance, where property is devised to a person for life, remainder to such of his children as shall be living at the time of his death, and one of the children in the lifetime of his father becomes bankrupt and obtains his certificate, and then the father dies, the bankrupt's share of the property will have passed to his as-

signees by virtue of their appointment. (Archbold by Flather, p. 177; *Hegden v. Williams*, 3 P. Wms. 132.) AMICUS.

LIMITATION OF ACTIONS.

The limitation of ten years after the session of 1833, prescribed by the 3 & 4 W. 4, c. 42, for the commencement of actions of debt, or *scire facias* upon recognizances, applies, I apprehend, to cases in which the period of twenty years fixed by that act as the limitation in future, had expired, or nearly so, and the parties would consequently have been deprived of any remedy. The allowance of ten years from 1833 is an indulgence to those who from ignorance, or the previous unsettled state of the law, had neglected to proceed within twenty years after the cause of action accrued. As the period of twenty years, in the case stated by "*Amicus*," Vol. 21, p. 423, might have expired so soon after the passing of the act as to have precluded him from bringing his action within the required time, it is but reasonable to extend its operation to such cases; for in no other instances is it of any use. It is difficult, on any other supposition, to ascertain the reason why so long a period as ten years should be allowed in one class of cases (where the twenty years expired before the passing of the act), and no indulgence whatever where there might otherwise be great inconvenience, if not denial of justice. If this be the correct view of the question, the debt mentioned by "*Amicus*," will be recoverable any time before 1843. G. S.

REVOCATION OF WILL.

The 18th section of 1 Vict. c. 26, expressly states that "*every* will made by a man or woman shall be revoked by his or her marriage" (except in case of powers of appointment to be exercised by will); and the 22d sections of the same act, that "*no* will revoked shall be revived otherwise than by re-execution, or a codicil to revive it." The case mentioned by S. P., p. 424 of the last volume, amounts to this:—*A. B.* makes a will; by a second will expressly revokes the first, and by a subsequent marriage revokes this second. At the time *A. B.* made the second will he thereby legally revoked the first. But if it were admitted that by his second marriage he revived his first will, it would nullify all those acts which the law distinctly states to be fatal to previously made wills, and we should have claims starting up in every quarter grounded on wills which both the owner had, in his lifetime, supposed to have been long since destroyed, or rendered of no use by subsequent revocation, and to which the law would be perplexed to assign the preference. As it is, the statute being clear in requiring an express revival by re-execution or a codicil, it shuts out any civil by mere operation of law, and frees us right of the widow to administration (in S. P.'s case) from all manner of doubt, G. S.

ATTORNEYS TO BE ADMITTED,
Trinity Term, 1841.

QUEEN'S BENCH.

[Concluded from p. 12.]

Clerk's Name and Residence.

To whom articulated, assigned, &c.

Richardson, William, the younger, 22, New Millman Street; and Dublin.	William Richardson, the elder, Wallbrook.
Sweetland, John Parto, 5, New Millman St., Sandford, Edward, 8, Wharton Street; and Shrewsbury.	Henry Rivington Hill, Throgmorton Street.
Savory, Thomas, Great Yarmouth; 9, Museum, Street, Bloomsbury.	Richard Ford, Shrewsbury; assigned to Hurwood Thomas, Shrewsbury.
Sowton, Matthias James, 14, Wakefield Street, Regent Square; and Chichester.	John Freame Ranney, Great Yarmouth.
Sidney, Marlow Wm. John, 6, Southampton Place; and Stockton.	William Sowton, Chichester.
Smith, William Severn, 20, Charlotte Terrace; and Brixworth.	Messrs. Wilson and Faber, Stockton.
Scrutton, Daniel, Springfield.	William Cox, Daventry.
Symes, John David, 66, Goswell Street Road; and Crediton.	James Palmer, Chelmsford.
Smith, William Edward, 23, Bedford Street; and Mansfield.	George Tanner, Crediton.
Sowden, Henry Best, 16, Southampton Street, Bloomsbury; and Hereford.	Richard Parsons, and Richard William Benn, Mansfield; assigned to Campbell W. Hobson, Gray's Inn.
Smith, John, 7, Castle Street, Bloomsbury; and Alfred Street.	Thomas Hardwick, Hereford.
Sharp, Frank, 7, John Street, Adelphi; and 184, Piccadilly.	Charles Bailey, Winchester; assigned to Chas. Parker, Princes' Street.
Thomson, William Henry, 6, King's Terrace, Pentonville; and Hunton Erdington.	Stephen Heelin, Manchester.
Trollope, Charles, 2, Grenville Street, Brunswick Square; and Bedford.	William Sextus Harding, Birmingham.
Todd, Charles Spillman, Kingston-upon-Hull.	Theed Pease, the younger, Bedford.
Toogood, Henry, 16, Norfolk Street, Strand; 63, Lincoln's Inn Fields.	John Hewitt Galloway, Kingston-upon-Hull.
Taylor, Henry, 15, Church Street, Spitalfields.	John Thomas Miller, 3, Furnival's Inn; assigned to Thomas Walker, 3, Furnival's Inn.
Taylor, Michael Coulson, Leeds.	Charles Frederick Collins, 33, Spital Square; assigned to John Fox, 1, Basinghall Street.
Thistleton, George, the younger, Bury; Blackburn; and now of Liverpool.	William Slater, York, and D'Arcy Strangeways, Barnard's Inn.
Vipan, Edward Joseph, 93, Quadrant, Regent Street.	Charles Bird, Liverpool.
Westwood, William, 19, Singleton Street, Hoxton.	Frederic Lane, King's Lynn.
Witney, Samuel, Devizes; and Chippenham.	Robert Montagu Hume, 44, Lincoln's Inn Fields.
Williams, Griffith Jones, Dolgelly; 2, Red Lion Court; and Charter House Lane.	Samuel Witney, the elder, Colchester; assigned to Grantham Robert Dodd, New Broad Street; assigned to Joseph Phillips, Chippenham.
Walsh, William Henry, 29, White Street, Little Moorfields; and Aldermanbury.	William Griffith, Dolgelly; assigned to Rowland Williams, Dolgelly; assigned to Henry Weeks, 12, Cook's Court.
Wallington, Richard Archer, 32, Cloudesley Street, Islington; Warwick.	Joseph Dobbins, Furnival's Inn.
Young, James, 67, Farringdon Street; and Guildhall.	Thomas Morris, Warwick.
	William Willoby, Berwick-upon-Tweed; assigned to Robert Home, Berwick-upon-Tweed.

Added to the List by Judges' direction.

Bramwell, Henry Clifford, 9, Belgrave Terrace.	William Henry Trinder, John Street.
Brown, William Joseph, 53, Upper Marylebone Street; and Gateshead.	John Hughes Preston, Newcastle-upon-Tyne.

Clerk's Name and Residence.

Camden, Charles Taylor, 5, Allen Terrace, Kensington.
 Crowdy, George Frederick, 5, Gray's Inn Square; and Farringdon.
 Collins, William Hutchinson, Ross.
 Freer, Thomas, Glamford Briggs.

Goldingham, Herbert George, 20, Calthorpe Street.
 Greenwell, Henry, 36, Store Street; and Durham.
 Gray, Christopher, 10, Lower Brunswick Terrace, Islington; Leeds; Wilstrop; and Edmund Place.
 Gurney, William, 6, Manchester Street, King's Cross; Penzance; and Dyer's Buildings.
 Hall, Wellington Augustine, 26, Great Clarendon Street, Somers' Town; and Usk.
 Harting, Joseph Thomas, 3, Edward's Square, Kensington.
 Hinrich, Henry, 9, John Street, Adelphi.

Jones, Hugh, Beaumaris.
 Lumb, Frederick, Wakefield.
 Molineux, Joseph, 9, Norfolk Street, Strand; Fenchurch Street; and Lewes.
 Mitchell, Richard, Preston.

Parkinson, Frederick Kidman, Racquet Court, Fleet Street.

Pardoe, Frederick, 5, Warwick Court; Hop-ton Castle.
 Poole, Joseph Ruscombe, the younger, Bridgwater; Alfred Place; and Field Court.

Paterson, William Benjamin, Wimbledon.

Robinson, Carew Sanders, North End, Croydon.

Sawyer, John James, Alfred Place, Bedford Square; and Tavistock Row.

Seckerson, Henry Barlow, 1, Leigh Street, Burton Crescent; Stafford; and Norfolk Street, Strand.

Squire, Charles James Flower, 12, Abingdon Street; and Odiham.

St. Patrick, Charles G. Henry, 57, Lincoln's Inn Fields; Gloucester Street; and Ottery St. Mary.

Storey John Samuel, the Younger, 10, York Street, St. James's; and Foley Place.

Thwaites, John Eskett, 8, Three Crown Square, Southwark; and Durham.

Verrall, Albert, 46, Penton Place, Pentonville.
 Vaughan, John Lingard, 5, Dyer's Buildings; and Heaton Norris.

Walker, George Henry, 10, Devonshire Street; Rugby; 36, Great James's Street; and Sidmouth Street.

Wise, William Howard, Nottingham.

Wilkinson, Samuel, 13, Chadwell Street, Myddleton Square; Bishopswearmouth; and Whitby.

To whom articulated, assigned, &c.

Thomas France, Bedford Row.

Richard Wheeler Crowdy, Farringdon.

John Stratford Collins, Ross.
 George Saffery, Market Rasen; assigned to John Nicholson, Glamford Briggs.
 Charles Pidcock, Worcester.

George Appleby, Durham; assigned to Robert Ingram Shafto, Durham.
 John Eddison, Leeds.

John Henry Badcock Gurney, Penzance; assigned to Francis Paynter, Penzance.
 Alexander Jones, Usk.

Charles Francis Arundell, Cork Street.

Andrew Henrich, John Street, Adelphi; assigned to James Knowles, Buckingham St.
 Thomas Williams, Beaumaris.
 Robert John Lumb, Wakefield.
 George Philcox Hill, Brighton.

Thomas Mitchell, Haslingden; assigned to Thomas Harris, Preston.

George Capes, 5, Raymond Buildings; assigned to G. Haslehurst Bullivant, 32, Alfred Place.
 John Lloyd, Ludlow.

J. Ruscombe Poole, the elder, Bridgwater; assigned to Archibald Keightley, Chancery Lane; re-assigned to J. R. Poole, the elder, Bridgwater.

Thomas Mortimer Cleobury, Warwick Street, Regent Street.

William Turner, Brighton; assigned to Chas. Chatfield, Cornhill.

William Everest, Epsom; assigned to James Burton, Queen's Square.

Philip Seckerson, Stafford; assigned to Edward Bell, Stafford.

Richard Jago Squire, Plymouth; assigned to James Brooks, Odiham.

Francis George Coleridge, Ottery St. Mary.

John Samuel Storey, St. Alban's; assigned to Charles Alliston, Freeman's Court.

Richard Thompson, Durham.

Edward Verrall, Lewes.

Roger Rowson Lingard, Heaton Norris; assigned to Charles Back, Chancery Lane; re-assigned to R. R. Lingard, Heaton Norris.

George Harris, Rugby.

William Wise, Nottingham.

Joseph John Wright, Sunderland.

SUPERIOR COURTS.

Lord Chancellor's Court.

INTERPLEADER BILL.

Interpleader in equity is where two or more persons, claim the same debt or duty. Held, therefore, (reversing a decree of the Master of the Rolls,) that a bill by an auctioneer against his employer for sale, and two purchasers to whom he sold the same property of his employer successively, calling on them to interplead in respect of the several deposits paid by the purchasers, is bad, there being no identity or connection between the two deposits, the subject of the bill.

The plaintiff is an auctioneer in London, and was employed by the defendant Thodey in 1836, to sell freehold property situate at Finchley. The defendant Cutts became the purchaser, and paid a deposit to the plaintiff. He afterwards took an objection to the title which he required to be cleared up. The plaintiff then set up the same property for sale again, giving out that the sale to Cutts was at an end, as he did not complete his purchase. The defendant Vicars became the purchaser at the second sale, and paid a like deposit. Cutts filed a bill for specific performance against Thodey, to which he made the auctioneer and Vicars parties defendants. Thodey brought an action against the auctioneer for the deposits, and the depositors either brought or threatened actions for their respective deposits. In that state of things the auctioneer filed his bill against the three, the vendor and two purchasers, stating the facts, and praying that they might be decreed to interplead together, and that it might be ascertained to which of them the deposits should be paid, and that in the mean time they might be restrained from proceeding with actions at law against the plaintiff. The plaintiff afterwards obtained the injunctions prayed for, and paid the deposits into Court, under an order obtained against him by the defendant Cutts. The cause came to be heard before the *Master of the Rolls*, and his lordship decreed as prayed. The two defendants,—Cutts and Vicars appealed separately from his lordship's decree.

Mr. Richards and Mr. Rogers supported the decree.—Lord Eldon said, in *Angell v. Hadden*,^a an interpleading bill is considered as putting the defendants to contest their respective claims, such as a bill by an executor or trustee to obtain the direction of the court upon the adverse claims of the different defendants. Hoggart was in the character of a trustee here. It was no objection to a bill of interpleader that there were many defendants. The plaintiff had a right secure himself against numerous claims. These defendants, if they objected to the bill, ought to have demurred to it, and not waited for the hearing of the cause. It was not now open for Cutts, who

submitted to the bill by his obtaining the order against Hoggart, to pay the money into Court. Lord Eldon said, in the case of *Hyde v. Warren*, “that the money being brought into Court, the bill could not be demurred to, as not being a bill of interpleader.” If the bill could not be demurred to after payment of money into Court, of course it was not open to objection at the hearing for the same reason.

Mr. Lee and Mr. Heathfield, for Cutts, said he was the principal defendant on the record. Hoggart had acted improperly in selling the same property twice, slandering Cutts' title. He ought to have refused to sell the property again during the controversy between Thodey and Cutts, he might properly call on them to interplead in respect of the single deposit, if they had sued him at law for it. It was Hoggart's fault that Vicars was introduced. An auctioneer was only a stakeholder: his duties and liabilities are stated with reference to the cases applicable to them in the first volume of Sugden's *Vendors and Purchasers*, p. 75. He had no right to dispose of the property to Vicars while he held Cutts' deposit. An interpleader bill lay only where two or more persons demand the same debt or duty.^b But the things here demanded by the defendants were different things: the deposit of Vicars had no identity or even connection with the deposit paid by Cutts. There is no connection between those two defendants, except that they are defendants, and object to the bill. In *Metcalf v. Hervey*,^c Lord Harwicke said, “he would not be willing to allow new inventions in bills of interpleader, which might be dangerous.” The nature of interpleader was well put in the argument in *Crawshaw v. Thomson*.^d “The characteristics of a real case of interpleader are that the holder of the goods being under a single liability only, is yet subject to be vexed, by more than one claim. The establishment of the title of one claimant, however, is a discharge of the title of all the others. There is no case of interpleader where the holder has made himself personally liable to several persons.” And in that case his lordship said,^e “the case tendered by every bill of interpleader ought to be that the whole of the rights claimed by the defendants may be properly determined by litigation between them, and that the plaintiffs are not under any liabilities to either of the defendants beyond those which arise from the title to the property in contest; because, if the plaintiffs have come under any personal obligation, independently of the question of property, so that either of the defendants may recover against them at law without establishing a right to the property, it is obvious that no litigation between the defendants can ascertain their respective rights as against the plaintiffs.” Hoggart, the plaintiff, did so mix himself up in the transaction as to bring himself under

^b *Dungey v. Angove*, 2 Ves. 310.

^c 1 Ves., sen. 248.

^d 2 Myl. & C. 1., see p. 19.

^e Page 19.

^a 16 Ves. 202. See S. C. 15 Ves. 244.

obligations beyond that of a mere stakeholder, taking upon himself to sell to one of the defendants property which he had before sold to the other, whose money he held. Notwithstanding, no decree ought to have been made for him on this bill. He might have obtained protection of the Court by submitting to answer the bill filled by Cutts for specific performance, and it was unnecessary to file this interpleader. In answer to the argument that Cutts was estopped from questioning the interpleader after his motion to pay the money into Court, they referred to the case of *Dungey v. Angove*, to shew that the money ought to have been brought into Court before the motion for the injunction, and that a defendant was not precluded, by a motion to bring in the money for securing himself, from afterwards contending that the bill ought to be dismissed.

Mr. Tinney and Mr. Rasch, for the defendant Vicars, and Mr. Wood for Thodey, were stopped by

The Lord Chancellor, who said he could not conceive how Mr. Hoggart could sustain this interpleading bill and have his costs, he having, after first taking the deposit of Cutts, taken another deposit from Vicars, for a sale to each of the same property. There could not be any proceeding in an interpleading suit to decide the question between Thodey, Cutts, and Vicars, and the bill should, at all events, be dismissed against one or the other of the two latter.

Mr. Richards.—The whole of the deposits would be exhausted by separate bills of interpleader. There was no question of multifariousness—that was admitted in the Court below. That having been admitted in the Rolls, and also that this was a good interpleader, the plaintiff did not amend his bill, and he was now taken by surprise by these objections.

The Lord Chancellor.—By consent between the parties, they might be tied down to have their rights decided in this suit, to save expense. But without that consent, all I have to do is to see whether this is a proper interpleader. I say it is no bill of interpleader at all. Proper matters for an interpleader must be the subject of contest between all the co-defendants. Is that so here? An estate is put up for sale. Cutts buys it, and pays a deposit. The estate is put up again, and Vicars buys it, and he also pays a deposit. Now what is in common between Cutts and Vicars, two of the co-defendants? The vendor, Thodey, demands both deposits from Hoggart. Vicars, the second purchaser, knew nothing of what passed between Cutts and Hoggart. The sum paid by Vicars was not a further deposit, but a different deposit. It is impossible to settle the question of Thodey's right to the deposits by reference to the other two parties, between whom there was nothing in dispute, who, however, may agree to submit to the suit, and so dispose of the question; but if they are before the Court adversely, this bill cannot be maintained against both. It must be dismissed as

against one or the other: Cutts being the first purchaser, the best course will be to dismiss the bill with costs, as against Vicars, and then the injunction, so far as it restrains Thodey's action for Vicars's deposit, must be dissolved. The costs of so much of the suit as is not dismissed, to be paid out of the deposit of Cutts, who is to be at liberty to proceed in the suit commenced by him for specific performance.

Hoggart v. Cutts, Thodey, and Vicars.—At Westminster, April 19, 1841.

Queen's Bench.

[Before the Four Judges.]

EVIDENCE.—HIGHWAY.

Upon an indictment against a parish for non-repair of an alleged highway, in which the question is whether the way be a public highway or not, owners of land in the parish which is liable to be assessed to the highway rate are competent witnesses for the defendants, although the land be at the time of the trial in the occupation of their tenants, who are rated in respect of it by virtue of 3 & 4 Vict. c. 24.

A line of road had been used by the public for 70 or 80 years, but until 1829 a gate had stood upon a portion of the road, and toll was from time to time taken by the occupiers of the farm on which the gate stood; no obstruction ever existed at any other part of the road. In 1829 the owner and occupier of the farm diverted the road, and removed the gate; and since that period the public had used the way without obstruction. Held, that it was properly left to the jury to say whether, since 1829, supposing the owner and occupier of such farm to have dedicated the way to the public, all the other owners of property along the line of road had acquiesced in, and consented to such dedication, so as to give the public a right to pass over their lands.

This was an indictment for the non-repair of an alleged highway, leading from a certain place in the parish of Doddington through several farms, in the occupation of different persons, to the church of the hamlet of March, in the Isle of Ely and county of Cambridge. Plea, Not Guilty. At the trial before Tindal, C. J., at the last Cambridge assizes, the jury, after a trial which lasted five days, returned a verdict of Not Guilty. The sole question in issue at the trial was, whether the way in question was a public queen's highway, or not; it being admitted by the defendants to be out of repair, and to be locally situate in the parish of Doddington. It appeared that the portion of road, indeed, was about two miles in length, and extended from Copalder Corner to a place called Flood's Ferry Mill Drain. The road then continued from the latter place through a farm belonging to Lady Sparrow, and occupied by one Tebbutt, to the hamlet of March; the entire length from Copalder Corner to March being seven miles. On the part of the Crown upwards of 100 witnesses were called,

who proved a free and uninterrupted user of the entire length of road for a period extending over 70 or 80 years. They all admitted that until within 12 or 13 years before the preferring of the indictment there had been a gate across the road at a point near the house on Tebbutt's farm, but stated that they had never found it in any manner fastened, and that there was no difficulty in opening it, and that they had never paid any toll or acknowledgment. The defendants, on their part, called considerably more than 100 witnesses, who also proved the user of the road for as long a period as living memory extended, but added that they had on several occasions found the gate at Tebbutt's farm locked, and that they had frequently paid toll or acknowledgment to Tebbutt and his predecessors for permission to pass through the gate, and along the road. It was also shewn that about the year 1829, Tebbutt, by the consent and with the sanction of his land-lady, had altered the line of the road near his house, by turning it round his homeclose, instead of its running through his farm yard; and at the same time the gate already mentioned had been wholly removed.

In the year 1836, seven years after this alteration, and the removal of the gate by Tebbutt, a Mrs. Layton had paid a penny to Mrs. Tebbutt for permission for the passing of a hearse, with the body of a child, which was taken to be buried in the church at March; and that in the year 1838 Mrs. Layton, having another child to be buried in the same church, sent on the day before the funeral 6d. to Mrs. Tebbutt, with a request that she would permit the corpse to pass along the road. Mrs. Tebbutt returned this last mentioned money to Mrs. Layton, with a message that "she was very welcome to go free."

Amongst other witnesses called on the part of the defendants to prove the payment of toll, was Mr. Orton. On examination on the *voir dire* he stated that he did not reside in the parish of Doddington, but that he was the owner of real property in that parish, which was in possession of his tenants.

Mr. Kelly, with whom were Mr. Andrews and Mr. Byles, on the part of the prosecution, objected to the competency of the witness. He was incompetent at common law, as his estate would be immediately and permanently depreciated if the way in question should be established as a public highway, liable to be repaired by the parish. But the 3 & 4 Vict. c. 26, would be relied upon. That statute, however, applied only to cases in which the objection arose by reason of the witnesses being either assessed to the highway rates, or liable to be so assessed; but the witness was in neither predicament.

The *Solicitor General*, (with whom were Mr. Taylor and Mr. Gunning) *contra*, contended that the witness was competent, even at common law; but, if that should not be so, that the recent statute had rendered him so. He could only be said to be interested by reason of his property being assessed or liable to be assessed to the highway rates, from which the

repairs of this road would be paid, and the circumstance of his not being the present occupier of his estate made no difference in principle. His interest was less than that of his tenants, who were rated, and they were rendered competent by the statute.

The *Lord Chief Justice* admitted the evidence; and several other witnesses, situated as Mr. Orton was, were also examined. The defendants had a verdict.

Mr. Kelly now moved for a rule to shew cause why this verdict should not be set aside, and a new trial had, on the ground, first, of the improper reception of this class of witnesses; and secondly, for misdirection on the part of the learned judge. In support of his objection to the admissibility of the evidence, he relied on the authority of *Rhodes v. Ainsworth*,* where it was held that it is an objection to the competency of a witness who comes to discharge certain premises from a rate that he has property of the kind in question in the occupation of a tenant subject to such rate, if established, and therefore his own reversionary interest may be affected thereby.

With respect to the misdirection, the *Lord Chief Justice* should have left it to the jury to say whether, since the alteration in the line of the road and the removal of the gate, there had not been a complete dedication of the way by all persons interested; and, as that was the only point at which it could be said there was at any time a disturbance, the way became a public highway as soon as the impediment was removed by all competent parties, and the jury should have been so directed. [Lord Denman, C. J.—Did you prove the consent of all the other occupiers along the sides of this way, and the usage of it subsequent to the removal of the gate? They might be willing to allow the use of the way by the public so long as the gate stood, and that Tebbutt, by the taking of tolls, prevented the gaining of a right by the public; but it was a very different question when the gate was taken away.] There was no point made by the defendant on that ground, and all the occupiers knew of the use of the road by the public, as well since as before the removal of the gate.

Lord Denman, C. J.—We think the recent statute rendered the witnesses competent. It is desirable to give the fullest effect to the words of the act, and it would be most unfortunate if the legislature had rendered the more interested persons competent, and had not provided for the admission of the less interested. On the other point,

Cur. adv. vult.

Lord Denman, C. J.—In the case of *The Queen v. The Inhabitants of Doddington*, we have seen the learned judge who tried the case, and we find that the question was left to the jury in the way in which, when the rule was moved for, I thought it should have been submitted to them. The question was, whether Tebbutt and his landlady had, since 1829, dedicated the way to the public, and whether the

* Holt. N. P. Rep. 419.

parties interested in the other lands, through which the way ran, had acquiesced in that dedication, and had themselves dedicated their lands to the public since the removal of the obstruction by Tebbutt. The case was so submitted to the jury, and they were not satisfied that they had so done; the learned judge thinks they came to the proper conclusion. There will, therefore, be no rule.

The Queen v. The Inhabitants of Dodding-ton, E. T. 1841. Q. B. F. J.

Queen's Bench Practice Court.

IRREGULARITY.—LACHES.—WAIVER.—LAPSE OF TIME.—NULLITY.

On the 15th February, 1841, a levy was made on the goods of a defendant; it was held too late to apply to set the levy aside on the third day of Easter Term, on the ground that the defendant had not been served with process, or notice of any proceedings previous to the execution of the levy, the plaintiff's proceedings only being objectionable in the light of irregularity—not nullity.

This was an action on a bill of exchange, against the accommodation acceptor. The amount was 30*l*. A considerable time had elapsed since the bill became due, and the defendant had every reason to presume that the person for whom the acceptance had been given by way of accommodation had paid the amount. On the 15th of last February, however, a levy was made on the defendant's goods for the amount of the bill and costs, &c.

Thesiger now (third day of Easter Term), moved for a rule to shew cause why the plaintiff's proceedings should not be set aside on the ground of irregularity. The objection was that no process or notice of process had been served or communicated to the defendant, until the time of the actual levy. No doubt the lapse of time since the levy took place was considerable; and if the objection to the plaintiff's proceedings could be put no higher than an irregularity, that irregularity might be waived; but here the proceedings of the plaintiff could be considered as amounting to nothing more than a nullity. No process had been served on the defendant, no appearance had been entered by him; no previous proceeding had been taken on which the judgment or execution could rest. They therefore amounted to a nullity only; and the defendant could not waive a mere nullity, although he might, by his laches, waive an irregularity.

Coleridge, J.—I will consider the case, and let you know on Monday.

Cur. adv. vult.

Coleridge, J.—It is clear, where there is an irregularity in any proceedings had in vacation, there is time in the course of that vacation to apply to a judge at chambers; it is imperative on the party complaining to do so; and he cannot wait to move to set aside the proceeding till the first four days of the next term, if, by his delay, he is likely to change

the situation of the other party. No doubt, the sheriff hearing nothing of these objections, would have paid over the proceeds of the levy to the plaintiff, and then placed the parties in a different situation from that in which they would have stood, if the defendant had applied promptly. I think, therefore, this application is too late, if the objection is an irregularity. But then it is said that the course pursued by the plaintiff renders this a proceeding not merely an irregularity, but a nullity. It is difficult always to distinguish between an irregularity and a nullity; but I think the safest rule to determine what is an irregularity and what is a nullity, is to see whether a party can waive the objection. If he can waive it, it amounts to an irregularity; if he cannot, it is a nullity. I think this objection might be waived. The real objection is, that there was a wrongful affidavit of service, on production of which the plaintiff entered an appearance for the defendant. But suppose the defendant had full notice that an appearance had been entered for him, and he had taken the declaration out of the office, and pleaded, it could not be objected by him that there was a defective service. The objection might therefore be waived, and is consequently a mere irregularity. The lapse of time is, I think, a waiver of the irregularity, and therefore there ought to be no rule. There is no affidavit of merits made, nor any reason suggested why the defendant could not ultimately be compellable to pay the bill, so that there is no ground for letting him in upon terms.

Rule refused.—*Holmes v. Russell*, E. T. 1841. Q. B. P. C.

ARBITRATION.—STAMPING AFFIDAVIT.—CAUSE.—STAMP ACT.

Where there is an arbitration, but no action has been brought, an affidavit used for the purpose of supporting an application to set aside an award made in the arbitration, must be made on a stamp, notwithstanding the provisions of 55 Geo. 3, c. 184, and 5 Geo. 4, c. 41.

In this case, certain matters had been referred by bond to an arbitrator, no action having been brought. An award was duly made, and the unsuccessful party applied for a rule to shew cause why that award should not be set aside on a variety of grounds set forth in the affidavit. A rule for that purpose having been granted,

Jervis shewed cause against it, and took, as a preliminary objection to the affidavit on which the rule was obtained, that it was not written on a stamped paper. The 55 G. 3, c. 184, and 5 G. 4, c. 41, only applied to affidavits used in "suits." In the present case, there was no cause or suit in Court, and therefore the affidavit supporting the application must still be stamped, notwithstanding the act which had been introduced repealing the statute requiring stamps on legal proceedings.

Martin, contra, admitted that the affidavit ought to be stamped, but applied for leave to

be allowed to have the rule enlarged until the affidavits could be re-sworn on stamped paper. Coleridge, J., allowed the rule to be enlarged for that purpose, on payment of the costs of the day.

Rule accordingly.—*In the Matter of Templeman*, E. T. 1841. Q. B. P. C.

STRIKING ATTORNEY OFF ROLL AT HIS OWN REQUEST.—AFFIDAVIT.—STAMP.

If an attorney applies to be struck off the roll for the purpose of going to the bar, the affidavit on which the application is founded must be stamped.

In this case an application was made by an attorney to be struck off the roll, for the purpose of going to the bar. The affidavit in support of the application was not on stamped paper, on which

Warren, who applied for the attorney, suggested, that in conformity with the decision *In the matter of Templeman*, in the present term, the affidavit ought to be stamped.

Coleridge, J., thought that it ought to be stamped. The application might be renewed on producing an affidavit on a properly stamped paper.

Application refused.—*Ex parte Ward*, E. T. 1841. Q. B. P. C.

Queen's Bench.

Sittings after Easter Term, 1841.

MIDDLESEX.	LONDON.
<i>Common Juries.</i>	<i>Common Juries.</i>
Monday May 10	Wednesday .. May 12
Tuesday 11	(the adjournment day)
	Thursday 13
	Friday 14
	Saturday 15

VACATION SITTINGS IN BANC.

Easter Term, 1841.

This Court will on Monday the 10th day of May next, hold sittings, and will proceed in disposing of the business in the Special and Crown Papers on that day, and will give judgment in cases which shall then be pending.

By the Court.

Orchequer of Pleas.

Sittings after Easter Term, 1841.

MIDDLESEX.	
Monday .. May 10	Customs.
Tuesday	Revenue Causes & C. J.
Wednesday 11	Excise.
Thursday 12	Common Juries.
Friday 13	

* A bill is now before the House of Commons for the purpose of amending the law on this point, so that for the future affidavits used in any Court of law need not be stamped. *Vide ante*, p. 20.

LONDON.

Tuesday .. May 11 To Adjourn only.
Friday 14 Adj't Day. Com. Juries.
Saturday 15 Common Juries.

The Court will sit at half past nine o'clock.

VACATION SITTINGS IN BANC.

This Court will on Tuesday the 11th day of May instant, and on Thursday the 13th day of the same month, hold sittings, and will proceed in disposing of the business pending in the Special Paper.

Dated, the 1st May, 1841.

ABINGER. J. PARKE.
E. H. ALDERSON. R. M. ROLFE.

May 1, 1841. Read in open Court.
Stephen Richards, Master.

MISCELLANEA.

ELOQUENCE OF BRITISH LAWYERS.

BROUGHAM.

"I am now out of place, and if that circumstance did not render it rather late for moralising, I could talk of the prerogatives not so very high, the enjoyments none of the sweetest, which he loses who surrenders *place*, oftentimes misnamed *power*, to be responsible for measures which *others controul*, perchance contrive; to be chargeable with leaving undone things which he ought to have done, and had all *the desire* to do, without the power of doing; to be compelled to *trust those* whom he knew to be utterly *untrustworthy*, and on the most momentous occasions involving the interests of millions, implicitly to confide in quarters where common prudence forbade reposing a common confidence; to have schemes of the wisest and most profound policy judged and decided on by the most ignorant and the most frivolous of human beings, and the most generous aspirations of the heart for the happiness of his species, chilled by frowns of the most selfish and sordid of the race! These are among the most unenviable prerogatives of *place*, of what is falsely called *power* in this country.—To be planted upon the eminence from whence he must see the baser features of human nature uncovered and deformed; witness the attitude of climbing ambition from a point whence it is only viewed as creeping and crawling, tortuous and venomous in its specious course—be forced to see the hideous sight of a naked human heart, whether throbbing in the bosom of the great, vulgar, or little—this is not a very pleasing occupation for any one who loves his fellow creatures, and would fain esteem them; and, trust me, that he who holds *place* (or as it is miscalled, wields power and patronage) for but a little month, shall find the many he may try to serve, furiously hating him for involuntary failure; while the few whom he may succeed in helping to the object of all their wishes, shall with a preposterous pride, seek to prove their independence by sh—"

their ingratitude, if they do not try to cancel the obligation by fastening a quarrel upon him." Vol. iii. 600.

LAW BILLS IN PARLIAMENT.

House of Lords.

For holding Petty Sessions and Summary Trials.
[In Committee.] Earl Devon.
Drainage of Buildings. [Passed.]
To limit the Criminal Jurisdiction of the
Quarter Sessions. [For 2d reading.]
For rendering a Release as effectual as a Lease
and Release. [In Select Committee]
Tithes Recovery. [For 2d reading.]
Double Costs, &c. [For 2d reading.]
Annual Indemnity. [Passed.]
Costs in frivolous Suits. [For 2d reading.]
To amend the Law of Principal and Factor.

House of Commons.

For facilitating the administration of justice
(in Chancery), No. 1. Attorney General.
[To consider Report.]
To facilitate the Administration of Justice in
the House of Lords and Privy Council,
No. 2. Sir E. Sugden.
[In Committee.]
County Courts. Mr. F. Maule.
[To consider Report 17th May.]
Bankruptcy, Insolvency, and Lunacy.
[In Committee 17th May.]
To remove objections to the admission of
evidence on the ground of interest.
[In Committee.] Mr. C. Buller.
To allow Writs of Error in *Mandamus*.
Sir F. Pollock.
[In Committee.]
Poor Law Amendment. [In Committee.]
For the Registration of Parliamentary Electors.
[In Committee.] Lord John Russell.
For the better regulation of Railways.
Mr. Labouchere.
County Coroners' Election. Mr. Packington.
[In Committee.]
Drainage of Lands. Mr. Handley.
[In Committee.]
Copyhold and Customary Tenures.
[Report on May 10.] Mr. Hope.
Administration of Justice in Boroughs.
[In Committee.] Attorney General.
To facilitate the Transfer of Real and Personal
Property held in trust for Charitable Pur-
poses. Mr. James Stewart.
[In Committee.]
Designs Copyright. [For 2d reading.]
To appoint a Public Prosecutor.
[For Select Committee.] Mr. Ewart.
To exempt Tithes from Parochial Assessments.
Mr. Hodges.
Middlesex Sessions. [In Committee.]
County Bridges. [In Committee.]
Punishment for Offences against the Person.
[In Committee.] Lord J. Russell.
Punishment for Embezzlement.
[For 2d reading.] Lord J. Russell.

To amend the Law of Sewers.

[In Committee.]

Enrolment of Burgesses.

[In Committee.]

Turnpike Acts Amendment.

[In Committee.]

Stamp Duties on Law Proceedings.

[For 2d Reading. See p. 20, ante.]

THE EDITOR'S LETTER BOX.

It is the intention of the Proprietors of this Work, on the establishment of the New Equity Courts, to commence a New Series of Equity Reports, to be reported by Barristers in each Court. The gentlemen who have agreed to undertake the task will communicate with each other, so as to prevent any unnecessary repetition of cases, and all expence that can be avoided. The names of the gentlemen will be given when the bill has passed. The reports will be accompanied with a *New Equity Practice*, which will explain from time to time the alterations made for the benefit of the practitioner.

The letters of W. F. M.; and "Omega;" have been received.

We cannot undertake the responsibility of advising on cases containing complicated statements, which should be laid before counsel. Our correspondents should send us knotty points only.

If "A Law Student," has time and health sufficient for the purpose, we recommend him to enter on the *long* course of study pointed out in the Articled Clerks' Manual.

From the hand-writing and contents of "Castigator's" letter, we believe the writer is an unsuccessful author of two small books, one of which we noticed, because it might possibly be mischievous: the other is harmless and insignificant.

Part II. of the Analytical Digest for 1841, containing all the Cases reported in the House of Lords, in the Courts of Law and Equity, in the Privy Council, and in the Ecclesiastical and Admiralty Courts, from the 1st of February, to the 1st of May, 1841, will be published on Saturday next.

We recommend our Subscribers to bind up the Index to the first twenty volumes of this work with the twenty-first volume, just published, as the whole will then be rendered continuous and complete.

The Legal Observer.

SATURDAY, MAY 15, 1841.

— “Quod magis ad nos
Pertinet, et nescire malum est, agitamus.

HORAT.

THE ABOLITION OF THE LEASE FOR A YEAR.

THE bill for rendering the lease for a year unnecessary, was read a third time on Monday last, and now waits only the royal assent. The only alteration that has been made in it by the House of Lords is, that it is to come into operation on the *fifteenth* (this day), instead of the first of this month. It is therefore full time to consider its provisions, and its precise effect on existing practice. By the first section it is enacted “that every deed or instrument of release of a freehold estate, or deed or instrument purporting, or intended to be a deed or instrument of release of a freehold estate, which shall be executed on or after the 15th day of May, 1841, and shall be expressed to be made in pursuance of this act, shall be as effectual for the purposes therein expressed, and shall take effect as a conveyance to uses or otherwise, and shall operate in all respects both at law and equity, as if the releasing party or parties who shall have executed the same, had also executed in due form a deed or instrument of bargain and sale, or lease for a year, for giving effect to such release, although no such deed or instrument of bargain and sale or lease for a year shall be executed.” It will be seen that under the terms of this section it is optional with the parties to avail themselves of the provisions of the act; for in order to obtain the benefit of its provisions the release must be expressed to be made in pursuance of the act. Still we conceive that a very slight expression in the release would bring it within the act, and it would be held that the parties intended to avail themselves of it. Although the option is

given, it may perhaps be doubtful whether some liability might not be incurred by the practitioner, who, after it comes into operation, continues to use the lease for a year. If this deed were afterwards lost or mislaid, or was in any way invalid, and the title was endangered by this circumstance, it might be urged that the solicitor was bound to have taken the course which the legislature had provided to get rid of these difficulties.

The stamp on the lease for a year, we are sorry to say, is continued. Our readers will remember that the bill as originally^a introduced by Mr. Stewart, contained no such provision, but he was obliged to give way as to this; the loss to the revenue being, as we understand, computed at 50,000*l.* per annum. The following proviso must therefore be attended to: “provided that every such deed or instrument so taking effect under this act shall be chargeable with the same amount of stamp duty as any bargain and sale or lease for a year would have been chargeable with (except progressive duty) if executed to give effect to such deed or instrument, in addition to the stamp duties which such deed or instrument shall be chargeable with, as a release or otherwise, under any act or acts relating to stamp duties.”

But the second section is of equal importance with the first. It will, in effect, go very far to dispense with the necessity of producing any lease for a year, executed before the 15th of May 1841, and the expense of attested copies of any such deed. After reciting that many deeds of bargain and sale, or leases for a year, have been lost or mislaid, it is enacted, that where in any re-

^a See 21 L. O. 306. See the subsequent print, p. 356.

lease executed before the 15th of May 1841, the lease for a year for giving effect to such release shall be recited, or by any mention thereof, such deed of release shall appear to have been made or executed, such recital or mention shall be conclusive evidence of the lease for a year so recited or mentioned, "and such deed of release shall have the like effect as if the same had been executed after the 15th day of May 1841, whether such deed of bargain and sale or lease for a year, shall or shall not have been lost or mislaid, or may or may not be produced." Under this section, as we conceive, the production of the lease for a year on the examination of a title, will go gradually out of use.

By s. 3, the act is to extend to customary lands which are conveyed by lease and release, it being enacted that the word "freehold" shall have not only its usual signification, but shall extend to all lands and hereditaments for the conveyance of which, if this act had not been passed, a bargain and sale or lease for a year, as well as a release, would have been used.

Altogether, although we would have gladly seen the stamp duty removed, yet we think that this act remedies a considerable practical grievance, and removes a technical objection to titles, which it ought never to have been in the power of any one to have made.

REMOVAL OF THE COURTS FROM WESTMINSTER TO LINCOLN'S INN FIELDS.

THE Select Committee appointed by the House of Commons to inquire into the expediency of removing the Courts of Law and Equity from Palace Yard to the vicinity of the Inns of Court, met on Tuesday the 11th. The Solicitor General presided, and the other law members present were Mr. Lynch, Mr. Hayter, and Mr. Freshfield. Mr. Dowdeswell, the Senior Master of the Court of Chancery, and Mr. Hill, the Queen's Counsel, were examined.

On Thursday, the Committee again sat, Mr. Lynch in the chair;—and Sir Bardley Wilmot, Mr. Hayter, Mr. Freshfield, and Mr. Hume, were also present. The Lord Chancellor, Mr. Sutton Sharpe, Mr. Walker (one of the Masters of the Exchequer of Pleas), Mr. Holme, and Mr. Teesdale, were examined. On Friday the Master of the Rolls, Mr. Wright, and Mr. Field were examined. The evidence given at each of the meetings

proved beyond doubt the bad construction and insufficiency of the present Courts—their inconvenient locality—their almost total want of accommodation, either for the bar or the attorneys, the suitors, their witnesses, or the public generally,—and the consequent delay and increased expence of legal proceedings—the loss of time of the practitioners in attending at Westminster—the necessity of erecting new buildings for the Courts and Offices, and the great advantage of concentrating the Courts in the law quarter of the town. There was some question as to the site, whether Lincoln's Inn Fields, the Rolls estate, or Boswell Court; but the preference seemed greatly to preponderate in favor of Lincoln's Inn Fields.*

THE following evidence, taken before the Committee of the House of Lords on the Lord Chancellor's Bill for the better administration of Justice in Equity, bears importantly on the removal of the Courts.

"Mr. Wigram, Q.C.—The Vice Chancellor's Court is locally divided from the Lord Chancellor's Court by a wall only, and solicitors have often to attend a cause in that and also in the Lord Chancellor's Court on the same day; and it is a great convenience to them to resort to a court so circumstanced, and for that reason, in part, they go there in preference to the Rolls.

"Another great drawback upon the Court of Exchequer, and which I think must operate against it, so long as there is no compulsion to go there, is the inconvenience to solicitors in not having the general business of the court done within the same walls; as for example, in taking accounts and matters of that description.

"CONSIDERING public convenience, it appears to me that whether a new judge is created in Chancery or the Court of Exchequer transferred to the Court of Chancery, the whole should be transacted in one place and about one centre."

"Mr. Koe.—I understand the solicitors find it extremely inconvenient to have two sets of offices to attend, and it is so with the counsel who have two courts to attend, the business being small.

"I think the convenience of the suitors is very much consulted by the convenience of the bar and the convenience of the solicitors."

"Mr. Weatherall, the solicitor.—It is one of the inconveniences of the Court of Exchequer, that the attorney's clerk has to walk down Chancery Lane, if he has a cause in Chancery and in the Exchequer at the same time.

"Many of the solicitors, finding they could get the same despatch, and immediately under

* See further on the defects of the present Courts, p. 37, post.

the same roof, would I think prefer the Court of Chancery. I think it would extinguish the business of the Court of Exchequer to a very great extent."

"Mr. *Simpkinson*, Q. C.—States that about the time the new Courts of Westminster were building, the business of the Equity Exchequer fell off, and he suggests as one reason for it that that Court sat in term time at Westminster during that period, whilst the Chancery Judges sat altogether at Lincoln's Inn; and the solicitors, preferring the convenience of Courts at Lincoln's Inn to the inconvenience of attending at Westminster, deserted the Exchequer, and that cause operating at the time, the Court got out of fashion, and has not recovered its business."

"The *Vice Chancellor*.—Being asked whether two additional judges in the Court of Chancery would be sufficient? said, I think two would be sufficient at first. If two were appointed, I think in the course of time, it would be found that there would be a great increase of business, and that three would become necessary, and soon."

"Mr. *Sutton Sharpe*, said, I think it very possible that more than two additional Equity Judges might hereafter be found necessary."

"Mr. *Edwin Field*, Solicitor, said, I confess I doubt whether two judges will completely do the work. I do not think it will be found enough, and this independently of the great increase of business, which I am confident will happen (as the consequence of greater expedition.)"

To this important evidence, we may add that it is not denied by any one that the present site of the Courts interferes in a serious degree with the transaction of business; but some are unwilling to use a part of the garden of Lincoln's Inn Fields, which they consider ornamental and serviceable to ventilation. To this it is a sufficient answer, that the union of the Superior Courts of Judicature in a handsome structure, elevated, as is proposed, on a base adapted as a depository for the Public Records, would more than compensate, in point of ornament, for the partial sacrifice of the present garden; whilst, as regards ventilation, supposing two acres and a half to be required for the buildings, which is four times the space occupied by the Westminster Hall Courts, still ten acres of the Fields would remain, making, with the garden of the Inn and the New Square, an open area of seventeen acres. But, in fact, by the plan in contemplation, more ground will be cleared than covered. Serle Street must be continued to Pickett's Place, and a new street made from the south-west corner of Lincoln's Inn Fields to join the Strand, opposite Somerset House. These indispensable undertakings will sweep away build-

ings of the lowest description. Among the consequential improvements, a channel of communication between Holborn and the Strand may be expected, by the formation of a street at the back of the west side of Lincoln's Inn Fields from Little Queen Street to the street which will form the south-west access to the square of the new courts. Thus the square will be kept free from the intrusion and noise of general traffic.

NOTICES OF NEW BOOKS.

A Practical and Elementary Abridgment of the Common Law, as altered and established by the recent Statutes, Rules of Court, and Modern Decisions: comprising a full Abstract of all the Cases argued and determined in the Courts of Common Law and on Appeal: with the Rules of Court from M. T. 1824, to M. T. 1840, inclusive, and the Statutes during the same period; with connecting and illustrative References to the earlier Authorities, and explanatory Notes: designed either as a Supplement to the Author's Abridgment, or as a separate Work. By Charles Petersdorff, Esq., of the Inner Temple, Barrister at Law. Stevens & Norton. 1841.

COMPLAINT is continually made by the readers of law books, that most of them which appear either in the form of treatises or digests, do not present facilities of referring to the knowledge contained in them, and that the knowledge when found is not of a practical or available description. The cause of these complaints probably is, that in most instances the works in question are composed either by persons who have but a small amount of legal knowledge, even of a theoretical description, and no knowledge at all of its practical application. On both these points, we have a satisfactory pledge, in the name of Mr. Petersdorff, that no cause of complaint can arise in the execution of the laborious task he has imposed on himself in bringing out the above useful work. As far as the first and second number, which have now appeared, furnish us with the means of judging, we have no hesitation in saying that he has redeemed the pledge afforded by his name.

Our readers, no doubt, are aware that he has already produced a work in fifteen volumes, containing an abridgment of the

Common and Statute Law of England, and that the contents of that work were limited by the close of 1824. What has been done since then in altering the law is well pointed out by him in the advertisement to this work.

"The interval between the close of the year 1824 and the termination of 1840 has been more prolific in important variations in our system of jurisprudence and in the practical administration of the law, than any other period of our judicial and legislative history. Almost every portion of the system has been altered, modified, or rendered more fixed and certain, and in some instances it has been restored to the same state as it existed in earlier ages. The criminal law has been greatly improved, offences defined with precision, its severity mitigated, and its procedure simplified. The principles governing or affecting real property have been the subject of numerous legislative enactments, and made far more definite in their nature and intelligible in their application. The rules of descent have been divested of the incongruities and inconsistencies which formerly characterized them. The practice of the courts and the principles of pleading have been beneficially varied, and rendered more uniform and better adapted to the effective administration of justice. These comprehensive changes have greatly diminished the value of many of the existing Abridgments and Digests. The laws introduced by the legislature, and the rules of court, within the last sixteen years, with the decisions upon them, may be truly said to form a new era in English jurisprudence. There is scarcely a point of law, however minute, or a principle however general, that has not within that time been the subject of parliamentary investigation, or of legal decision or judicial comment."

The necessity of a supplement to the former work must, under such circumstances, be evident, and the increased practical experience of the author, of course, be calculated to augment its value. As a mere abridgment of the cases decided and the statutes passed since the end of 1824, and thus serving as a supplement to the previous work, it is a desirable production; but its merits are by no means thus limited. It may be used as an independent work as well as a supplement. A number of well-arranged notes, perspicuously and in a condensed form, shew the previous state of the law, and thus connect the old law with the new. As, for instance, if the reader turns to the head of "Abatement," he will find, in a short and practical note, an exposition of the law of abatement, as it stood down to the time of the decisions abridged in the text. This at once gives a view of the

effect produced by the late decisions, and saves the time and trouble of referring to perhaps many works on the subject.

Several new heads have been added, which will be found of practical utility, as, for example, the head of "Abandonment of Proceeds," "Adverse Possession," "Appropriation," "Accident," "Apportionment," &c.

To the cases abridged are attached marginal notes, stating the points decided in each case, in a form similar to the ordinary reports, but these notes are arranged to enforce or modify each other in such a way as to assume the form of a treatise. The reader, therefore, who is pressed for time, and has no particular object of research in view, may, in a few minutes possess himself of the substance of all the modern cases on each respective head of the law, so far as it depends on decision, since the end of 1824; and if he feels doubt as to any particular part of the marginal treatise, he has the case at hand to remove it. This, it must be perceived, is a valuable feature, and, as far as we are aware, not to be found in any other work.

The whole is arranged alphabetically, and thus every facility afforded to the investigations of the legal inquirer. We have only to hope that the author's engagements may not impede the rapidity with which such a work ought to appear.

THE PROPERTY LAWYER.

THE STATUTE OF LIMITATIONS.

SOME recent cases have been decided with respect to the statute 3 & 4 W. 4, c. 27, which we may take this opportunity of mentioning.

In 1788 estates were settled by marriage settlement to the use of the wife for life, with remainder to her issue in tail, with remainder to the settlor (whose heiress at law she was) in fee. In 1818, by deeds to which the husband and wife, and their only son *R. G.* were parties, and by a recovery suffered in pursuance thereof, the estates were limited to the use of the husband for life, remainder to the wife for life, remainder to *R. G.* the son, for life; remainder to his issue in tail; remainder to *J. F.*, his sister for life, with other remainders over. The husband died in 1819, the wife in 1822, and *R. G.* in 1828: Held that inasmuch as the estate of *J. F.* was carved out of the estate tail of *R. G.*, she had the same period for bringing an ejectment in respect of any of the estates comprised in the above deeds as he would have had, if he continued alive; viz. twenty years from the year 1822, when his remainder came into possession.

sion. Whether a writing amounts to an acknowledgment of title, within the 3 & 4 W. 4, c. 27, s. 14, is a question for the judge, and not for the jury to decide.

A party in possession adversely, of land, being applied to by the party claiming title to it, to pay rent, and offered a lease of it, wrote as follows: "Although, if matters were contested, I am of opinion that I should establish a legal right to the premises, yet, under all circumstances, I have made up my mind to accede to the proposal you made of paying a moderate rent, on an agreement for a term of twenty-one years." The bargain subsequently went off, and no rent was paid or lease executed: Held, that this letter was not an acknowledgment of title within the 3 & 4 W. 4, c. 27, s. 14. *Doe d. Curson v. Edmunds*, 6 M. & W. 295.

Where a lessor permits his lessee, during the continuance of the lease to pay no rent for twenty years, the lessor is not thereby barred by the statute 3 & 4 W. 4, c. 27, s. 2, from recovering the premises in ejectment. The case falls within the latter branch of the third section, which in the case of an estate or interest in reversion, provides that the right of action shall be deemed to have first accrued when it became an estate or interest in possession. The lessor therefore may recover in ejectment, at any time within twenty years after the determination of the lease. Mr. Baron Parke said, "Here there has been no adverse claim, and no payment of rent to any other person. It is the mere case of a tenant omitting to compel his tenant to pay the rent reserved by his lease. The right of the plaintiff manifestly accrued on the determination of the lease, and he is entitled to bring his action at any time within twenty years from that period." *Doe d. Davy v. Osenham*, 7 Mee. & W. 131.

STATE OF THE COURTS.

Mr. Editor,

In a former communication, I pointed out the want of arrangement and accommodation in the Courts, especially as applicable to the Judges and the Bar, and another paper was promised in reference to that large and responsible body,—the solicitors. It is not stating too much, to assert that (with the exception of a few inches in the shape of a seat) there is really no accommodation for the attorneys. In London and Westminster there may be a table placed for writing and papers, but this is not universally the case; for in the Court of Queen's Bench, at both ends of the room, the papers, books, &c., are scattered on the floor, where they get damaged and not unfrequently lost. In the Exchequer and Common Pleas, the attorneys are very much crowded at the table by the short-hand writers and reporters, who, it is but justice to say, are compelled to sit here, from having little or no accommodation whatever provided for them elsewhere.

Upon the *Circuits*, matters are still worse arranged, for there is not only a crowded and cramped position in which solicitors are compelled to be placed during a long special jury cause, but their seats are generally so low, behind or underneath their counsel, that it is difficult for them to see or hear. When an attorney happens to be engaged in a cause, which stands second, it is not unusual to hear the vague answer of "somewhere," to an enquiry, where a seat is to be found? As this direction, of course, seldom turns out to be useful, the unfortunate applicant has to stand with his papers in a dense and suffocating crowd, until the first cause is over. The annoyance thus occasioned, as also the confusion to which it leads in the Courts, is too well known by practical men to require a detailed notice of the evil.

Take the Court of Queen's Bench at Westminster, for instance. Should an attorney for the first time enter at the door opposite St. Margaret's Church, he will run no small chance of breaking his bones, when he turns to the right, and descends a short flight of dark and almost invisible steps. Coming out of the full glare of day-light, he is for the moment, almost blinded, by the sudden darkness in which he finds himself. Should an interesting case be on, the attempt at getting even a *locus standi*, is altogether hopeless; and should he be obliged to keep in attendance, he must walk up and down this dark and narrow passage for some hours. If he has papers and books, they must in the meanwhile repose quietly upon the floor of the same passage, unless he prefers sending them to a coffee-house across Palace Yard, where he must send some one to remain with and watch them.

The question naturally suggests itself, "why are there not two or three 'Solicitors waiting Rooms' immediately contiguous to each of the Courts?" In the city, there is something so called, but for privacy, for cleanliness, and practical convenience, it is wholly useless, inasmuch as it is open to all the world, and is a place of noise and confusion, and from being a receptacle for the effluvia coming out of the crowded Courts on each side, the atmosphere is in the most vitiated state. It must again be borne in mind, that much of this evil arises, not so much from deficiency of area in the Courts, as from a want of arrangement, two thirds of the Court being frequently left open to the crowd of people, who from various motives are brought together either at the assizes or at the sittings at Nisi Prius in term.

The accommodation which it is desirable to give to solicitors, divides itself into two classes: first, for those who are actually engaged in the cause under trial; and secondly, for those who are in waiting. The total want of convenience for the latter class, is an evil that calls most loudly for a prompt and liberal-minded remedy. When it is remembered that first-rate solicitors are, by habit and education, no less gentlemen than any other class of the community engaged in professional pursuits, it is surprising that they have for so many years remained in such

quiet endurance of the nuisance now complained of. Why are those, who at home and at their places of business, are accustomed to the comforts and decorum of modern society, to be plunged into a suffocating crowd, resembling what, the late Mr. Justice *James Allen Park* used frequently to call a "bear-garden." We believe that no amount of lucre can possibly compensate respectable solicitors for this every-day annoyance to which they are exposed in Courts, and to which they assuredly never would submit but from a sense of duty and responsibility, which they owe to their respective clients. A court of law, like a bank, or a house of parliament, is a place of business, and it is not surely desirable that men of business, engaged in the anxious discharge of important and difficult duties, should be compelled to undergo what amounts to neither more nor less than personal suffering. Public attention is now being directed to ventilation and public health out-of-doors. *Salus populi suprema est lex*; but why should these important matters be as they appear to be, almost wholly neglected in our Courts of Law and Equity.

One great cause of the grievances here pointed out, is that in Courts of sufficiently large dimensions, in addition to a want of arrangement, the class of people called door-keepers and javelin men, are not selected with much discrimination. In the assize towns, they are mostly persons of the lowest class of society. A better paid and a more intelligent class of people should be chosen by those in authority. As a remedy, it may also be suggested that to each of the Courts there should be attached one or two good rooms for solicitors in waiting, and one or two more for witnesses in waiting. And in such rooms, strong boxes should be provided, in which papers and books might be locked up with security until the cause is ready for trial. The door leading from the attorneys' waiting room, should open directly into that part of the Court where the attorneys are expected to be seated; by this means the Courts would be kept quieter and not so densely crowded, and there would be much more order at Nisi Prius. Thus, not only would the solicitors themselves be greatly benefited, but the business of the Court itself would be much facilitated, by being less subject to noise and interruption.

When it is remembered, how vast is the responsibility resting upon professional men; in case of success, how seldom they get their due praise; in case of defeat how frequently the blame is unjustly laid at their door; when we recollect the sums they pay in the shape of duty and fees, and the large amount they pay in the shape of advances, it is to be hoped, that at length (public attention having been called to the state of our courts) there will not much longer be any reasonable ground of complaint. If there is one point on which we may justly pride ourselves, it is, in the administration of justice. Whilst so much has been done, and so much more is still doing, to perfect our system of pleading, and to modify

and improve the principles of law, it is much to be wished, that the machinery of the Courts themselves—the architectural details connected with egress and ingress,—the ventilation,—acoustics, the distribution of seats and rooms, should receive much more attention than appears hitherto to have been the case. A court of justice is a sort of theatre of actual life, but the principles of its construction have hitherto been much less studied and understood than those which have been deemed deserving of attention in an ordinary play-house. At the present juncture, whilst the subject is about to undergo the fullest inquiry, the length of these observations may perhaps be excused by reason of their practical usefulness.

JACQUES.

POINTS IN COMMON LAW PRACTICE, BY QUESTION AND ANSWER.

No. V.

SUING IN ANOTHER'S NAME.*

81. The Courts of law, as a general rule, do not notice any rights or liabilities other than of the parties appearing on the record; and until recently a *cestui que trust* had no means at law of enforcing his rights, without the consent of his trustee. *Hickey v. Burt*, 7 Taunt. 48. The trustee being the plaintiff on the record, might have released the action, leaving the *cestui que trust* to resort to a Court of Equity to compel the trustee to sue.
82. The plaintiff on the record is the only person for and against whom the judgment can be given; and he cannot therefore be examined as a witness in the cause. *Bauman v. Radenius*, 7 T. R. 663.
83. The Courts of law frequently interpose an equitable jurisdiction, and though they cannot compel a trustee to maintain the right of the *cestui que trust*, yet when an action is commenced, and the party is thus brought within its jurisdiction, the Court affords a negative relief by preventing any exercise of his legal right inconsistent with the relations of trustee and *cestui que trust*, and with the substantial justice of the case. Hence, if the immediate owner of the inheritance, his title thereto being undisputed, after tendering an indemnity to the trustee of an outstanding term, bring an ejectment on the demise of the latter, the Court will do no more than stay the proceedings at his instance till a sufficient indemnity has been given to the satisfaction of the master. *Doe v. King*, 2 D. P. C. 580. So if the *cestui que trust* bring an action in his trustee's name for any substantial injury to the estate, or against the tenant for rent. *Spicer v. Todd*, 2 C. & J. 165.
84. If there be any dispute about the inheritance, as to the right heir, the trustee of the

* See the Questions, p. 20, ante.

- term has a right to take which side he pleases. *Spicer v. Todd*, 2 C. & J. 165; *Doe v. Clifton*, 4 Ad. & El. 809.
85. Where the landlord of a commonable tenement offered an indemnity to his tenant, and commenced an action in the name of the latter for an encroachment on the common by enclosure, and the tenant released the action, the court set the release aside. *Payne v. Rogers*, Doug. 407.
86. For a mere trespass on the land, the landlord cannot sue in his tenant's name without his consent, or an express stipulation to that effect in the lease. *Baxter v. Taylor*, 4 B. & Ad. 72.
87. If a landlord defend an ejectment in the tenant's name, without his authority, the plea and consent rule will be set aside at the instance of the defendant, notwithstanding an indemnity be offered. *Barnes*, 39.
88. If a person assign a debt to another, he impliedly gives authority to sue in his name. *Pickford v. Ewington*, 3 Dowl. P. C. 453; *Baxter v. Taylor*, 4 B. & Ad. 72.
89. If a debtor, after action brought, and notice of assignment, take a release from the assignee, or pay him the debt, the Court will set aside the plea. *Legh v. Legh*, 1 B. & P. 447.
90. Where a married woman, living apart from her husband under a sentence of separation, with alimony *pendente lite*, brought an action in her husband's name against the defendants for a trespass in breaking and entering her house, and taking away her goods, the Court refused, on their application, to stay the proceedings, though supported by an affidavit of the husband that the action had been commenced without his authority, observing that if he chose that the action should not proceed, he might release it, or if he wished only to be indemnified against costs, the Court would have secured an indemnity; but it was evident the defendants and the husband were colluding to protect their own wrong. *Chambers v. Donaldson*, 9 East, 470.
91. In a case where a bail-bond had been given in an action brought in the name of the husband and wife for a note given to the wife, it appeared that the parties had been separated for many years, that the husband could neither read nor write, and had been induced by the wife to sign a paper which contained an authority to bring the original action. Upon a motion to stay the proceedings on the ground that the husband did not wish to go on, the Court ordered the proceedings to be stayed till an indemnity was given, and the costs to be costs in the cause; but said they could not prevent the husband from releasing. *Morgan v. Thomas*, 2 Dowl. P. C. 332. But where the cause of action was an assault on the wife living apart, *Littledale, J.*, in staying proceedings till the husband had received an indemnity, said that the Court might perhaps prevent a release being pleaded, as the husband would have no right to release the cause of action, the wife's right surviving after her husband's death. *Harrison v. Almond*, 4 Dowl. P. C. 321.
92. As between co-plaintiffs on the record, though suing *en autre droit*, the Court will not interfere to stay the proceedings, unless the name of the dissenting party has been used, not only against his will, but fraudulently. *Emery v. Muskhaw*, 10 Bing. 23.
93. One partner has a right to use the names of the rest in suing for partnership debts. *Whitehead v. Hughes*, 2 C. & M. 318; *Ld. Raym.* 800.
94. Where there are two or more trustees, assignees, or executors, one of them may institute proceedings in the name of all. *Emery v. Muskhaw*, 10 Bing. 23. The only mode by which the other can put an end to the proceedings, is to give the defendant a release; and as he has a legal right to release, the Court will never prevent its being pleaded, unless it be clearly shewn to have been given in fraud of the rest. *Arton v. Booth*, 4 Moore, 192; *Furnival v. Weston*, 7 Moore, 456; *Crook v. Stephens*, 5 Bing. N. C. 688.
95. Where one of the two executors suing on a bond to the testator, received the money of the defendant without costs, which, as the action had been commenced against his will, he left to the other to pay, and gave the defendant a release, the Court refused to interfere. *Jones v. Herbert*, 7 Taunt. 421; *Herbert v. Piggot*, 2 Dowl. P. C. 300.
96. Where after a dissolution of partnership on the terms that the one should collect and discharge all demands on the firm, and pay over to the other his share of the surplus, if any, which terms were known to the defendant, and the other partner being indebted to the defendant on his private account, afterwards released the action, the release was set aside. *Barker v. Richardson*, 1 W. & J. 362; *Johnson v. Holdsworth*, 4 Dowl. P. C. 64; *Mountstephen v. Brooke*, 1 Ch. 390.
97. An application to the equitable jurisdiction of the Court is the only mode by which the effect of a release by the plaintiff, or one of the plaintiffs on the record, can be avoided. 7 T. R. 670.
98. Creditors under a deed of assignment sued in the debtor's name for a debt. The debt was not disputed, but the defendant gave in evidence a receipt from the nominal plaintiff, given after the assignment, in full of all demands. It was proposed in answer to shew that the defendant had full notice of the assignment, that no money had in fact been paid, and that the whole was a collusion between the two to cheat the creditor. But Lord Ellenborough said, 'If any motion had been made in term-time to prevent the defendant from availing himself of this defence, perhaps we might have interfered. *Alner v. George*, 1 Camp. 392; and see *Farrer v. Hutchinson*, 1 P. & D. 437.
99. Where two out of four executors sued for a debt due to the testator, and the other two released the defendants, the Court would not decide upon a motion to set aside such a

lease, whether it could be pleaded in bar. *Herbert v. Piggott*, 2 Dowl. P. C. 393.
100. If the nominal plaintiff release, it will be a contempt of Court.

See Lush's Practice, p. 194—198, where the whole of this subject is ably stated.

REGULATIONS OF THE DIVORCE COMMITTEE.

THE Divorce Committee has been renewed in the present session, and the following are the regulations, which slightly differ from those of the last session.

REGULATIONS.—To promote uniformity in the proceedings on divorce bills, the committee have adopted the following Regulations.

1st. That two days before the sitting of the committee on any divorce bill, a print of the bill and a printed copy of the evidence adduced previous to the second reading of the bill in the House of Lords, other than the evidence of the proceedings in the action at law and in the suit between the parties in any Ecclesiastical Court, be furnished by the agent for the bill to each member of the select committee; and the evidence communicated by the House of Lords is to remain with the committee clerk from the time of the commitment of the bill, and to be open to the inspection of every member of the committee; and the committee clerk is to give four days' notice of every meeting of the committee to the several members thereof.

2d. That the agent be required to prove service upon the party from whom the petitioner seeks to be divorced of a copy of the bill and of the order of commitment, and order for the attendance of parties, witnesses, counsel and agents; also to produce examined copies of the judgment in the action at law, and of the proceedings and judgment in the Ecclesiastical Court, except in those cases from India, in which evidence of the judgments in an action of trespass and in the suit for a divorce is included in the proceedings transmitted from thence in pursuance of the act 1 Geo. 4, c. 101, "To enable the Examination of Witnesses to be taken in India in support of Bills of Divorce on Account of Adultery committed in India."

3d. That in all cases in which the bill is opposed and the facts contested (except cases provided for by the said act of Geo. 4), the preamble will be required to be proved according to the laws of evidence, in the same manner as if the case had been heard at the bar of the House, under the system existing previous to the session of 1839.

4th. That in all cases which are not opposed, or where the facts are not contested, the agent will read to the committee, from the official copy of the evidence received by the House of Lords and referred to the committee, such testimony as shall appear to him sufficient to establish the preamble of the bill; but the com-

mittee will be entitled to require, as well in opposed as in unopposed cases, that any further part or the whole of the evidence so referred shall be read, or that additional evidence be adduced.

5th. That in all cases in which the petitioner for the bill has attended the House of Lords upon the second reading of the bill, he be required to attend also to answer any questions the select committee may think fit to require that he should answer.

J. W. Freshfield, Chairman.

27 April, 1841.

THE LAW OF JOINT-STOCK COMPANIES.

BANKRUPTCY.

WE have been requested to state more at length two of the cases mentioned in our last number, which are indeed of considerable practical importance.

Where a party held shares in a joint-stock banking company for a period of two years, and received successively two years' dividends on his shares; this was held sufficient to constitute a trading as a banker. "When a party," said Sir *George Rose*, "takes shares in a joint-stock bank for the express purpose of making himself a trader, and obtaining the benefit of the bankrupt law, in such a case the Court has decided that this is not a sufficient trading. But the chief question in this case is, whether there is not sufficient evidence that there was a *bond fide* copartnership as bankers for the purpose of profit. Now one of the criterions of partnership is, whether there has been a participation of profits among the persons alleged to be in partnership. It has been proved that the bankrupt held fifty shares in the banking company, and received two years' dividends on those shares. I would therefore put it to any man, whether this does not amount to a participation of profits in the concern, as a party jointly interested with the other shareholders? and that is quite enough to constitute him a partner, without the formal execution of a deed of partnership." *Ex parte Wyndham*, 1 Mont. Dea. & De G. 149. In the subsequent case of *Ex parte Atkinson*, p. 300, it was held that holding shares in a joint-stock company for a period of six days only, where no dividend or profit appeared to have been received by the party during the time that he remained possessed of the shares, did not constitute a trading. Sir *J. Cross* observing, "that they did not appear to have yielded any profit, or to have been purchased with a view thereby to seek a livelihood." The other cases, as to how far taking shares in a joint-stock company will constitute a trading, have been collected 21 L. O. 3.

TRINITY TERM EXAMINATION.

THE candidates who have given notice of admission for Trinity Term are 157
But this number includes 37 who have been already examined 37

120

To these are to be added 3 candidates, who have obtained judge's orders dispensing with a term's notice 3
And four who have given examination, but not admission notices 4

127

The Examiners have appointed Friday, the 4th June, to take the examination, and the testimonials of service must be left on or before Saturday, the 29th instant.

SUPERIOR COURTS.

Vice Chancellor's Court.

PRACTICE.—ABANDONMENT OF NOTICE OF MOTION.—COSTS.

If a notice of motion is given on the part of the plaintiff, and he afterwards amend his bill by adding other parties, without obtaining leave to amend without prejudice, and then give a fresh notice, in some measure different from the former, he will be considered as having abandoned his first notice, and will be liable to the costs of preparing for it.

The bill was filed for the purpose of restraining the assignees of a bankrupt from disposing of certain stock and effects which had been taken possession of by them on the ground of their being property in the order and disposition of the bankrupt, and a notice of motion was given for an injunction and the appointment of a receiver. The plaintiffs not having made the official assignee a party, and it appearing subsequently that the property had been taken possession of by the assignees under a commission of later date, a supplemental bill was filed, making all these new claimants parties to the suit, and a new notice of motion was thereupon given, upon which the plaintiff obtained an order.

Lowndes now moved for the costs of the first motion upon the ground of its being an abandoned motion. A different case had been made by the amended bill, and the original notice being only against the two trade assignees, it was clear that if it had been brought before the court, it must have failed. He cited *Martin v. Fust*, 8 Sim. 199, and *Jefferson v. Lord Pousis*, recently heard before the Vice Chancellor.

Jacob and Stevens, contra, urged that an order having been made according to the terms of the second motion, and the costs of that having been directed to be costs in the cause, the costs of the first ought to be subject to the

same direction, particularly as there was no essential difference between the two notices.

The *Vice Chancellor* said that if the original motion had been brought on, no order could have been made upon it in the absence of the official assignee: the court would either have refused the motion or directed it to stand over. The consequence was, that by reason of the mistake made by the plaintiffs, and not of any act or omission of the defendants, certain costs had been incurred, and as there was a miscarriage on the part of the plaintiffs, so much of the costs as were occasioned to the defendants in preparing for the first motion, must be paid to them by the plaintiffs.

Connell v. Tapp, May 7th, 1841.

Rolls.

INJUNCTION.—PART PERFORMANCE OF CONTRACT.

The plaintiff having agreed with some of the defendants, who were proprietors of certain steam vessels, to give them the benefit of an invention, secured by patent, for economizing the consumption of fuel, on certain terms stated in the contract, the Court refused to grant an injunction to restrain them from assigning their interest in the vessels to the other defendants, and to prevent them from using any other machinery than that to which the plaintiff's invention was applied, on the ground that, although the principle had been in part applied, yet that it did not appear to the Court that the plaintiff had succeeded in doing what he had engaged to do.

The plaintiff, having obtained a patent for an improvement in the working of steam engines used in vessels, entered into an agreement with some of the defendants, who at that time formed the Oriental Steam Company, to permit the use of his invention on board their vessels, and the terms of the contract were, that the plaintiff should, by all the means in his power, reduce the expenditure on account of the vessels, not only in the consumption of fuel, but also in reference to the general working and management of the steam engines and machinery of the vessels; that he should introduce his patent invention at an expence not exceeding 120*l.* to each vessel, and that he should indemnify the defendants against any additional wear and tear of the steam engines and machinery, and also against any additional expence to arise from the introduction of his invention beyond the ordinary wear and tear and expence. The agreement was to last for five years, and, if the invention answered, the defendants were to allow the plaintiff during that time a certain share of profits. There was also a stipulation that if the plaintiff's invention should be found not to succeed, or if any discovery should be made within the five years to supersede steam, or to supersede the plaintiff's invention, and render the consumption of fuel less, then the contract should be at end. Since the contract was entered into, those of the de-

defendants with whom the agreement was made had united with the other defendants, and they now together formed "The Oriental and Peninsular Steam Navigation Company." In pursuance of the agreement, the plaintiff was allowed to introduce his invention into some of the vessels belonging to the defendants, but it proving, as they alleged, a failure, they refused to continue the use of it. The plaintiff, on the other hand, insisted that the failure, if any, was attributable to the unskilful conduct of the defendants' workmen, and having filed his bill for a specific performance of the contract, now moved for an injunction to restrain the defendants, who were parties to the agreement, from executing any bill of sale to the other defendants of the vessels in which the plaintiff's invention was, according to the agreement, to be used, and the other defendants from accepting such bill of sale, and from using in the vessels specified in the agreement any other machinery than that to which the plaintiff's invention was applied.

Pemberton and Henthfield, for the plaintiff, said, the principal question was, whether the plaintiff had done what he had contracted to do. He had applied his invention to the Liverpool, one of the defendants' vessels, and was about to apply it to the three other vessels specified in the agreement; viz. the British Tar, the Tagus, and the Braganza, when he was stopped by the defendants, under the pretence that the invention was a failure. Much evidence had been gone into on both sides, but the result of it was to show that any want of success was to be attributed to the unskilful management of the machinery to which the patent had been applied, by the defendants' workmen, and not to any defect in the patent itself. There was, no doubt, a question whether the agreement could be executed in all its parts, but where an agreement was executory, a Court of Equity would interfere, because the question being one of damages, the measure of which could not be properly estimated by a jury, it was cognizable as well in equity as at law. What was the contract? The plaintiff, having agreed to apply his invention, it was stipulated that he should be allowed to participate in profits for five years. He was not only to receive benefits, but to perform obligations, and damages could not be so estimated as to give him the measure of the benefits that he was entitled to. *Bell v. Coggs*, 1 Bro. P. C. 296; *Addenley v. Dixon*, 1 S. & S. 607; *Morris v. Coleman*, 18 Ves. 437; *Headall v. Beckwith*, 2 Buss. & M. 88.

Kinderley, Turner, Loppatt, Rotch and Craig, for the defendants, after explaining at considerable length the nature of the invention, and the manner in which, as the defendants alleged, it had wholly failed of its object, contended that the plaintiff ought to be left to his remedy at law, for the bill was filed for specific performance of a contract, which the Court never granted where the case was one of great hardship or inconvenience; and the present application being ancillary to that relief, could not be sustained. *Kemble v. Kean*,

6 Sim. 333; *Kimberley v. Jennings*, 6 Sim. 340. It was scarcely to be supposed that if the plaintiff's invention had proved what it was represented to be, the defendants would not gladly have availed themselves of the use of it, but it had so totally failed that the whole machinery appertaining to it had been removed from their vessels, and what, then, could the plaintiff require? He claimed a share of profits, but he could not compel the defendants to make a single voyage if they objected, nor could he prevent them from disposing of the vessels, upon which it was impossible for him to claim any lien.

Pemberton in reply.—The question is whether the plaintiff having introduced his machinery and applied his invention, the defendants can now say they will remove them altogether, and refuse to allow the plaintiff any benefit. The reason why the defendants will not continue the use of the plaintiff's invention is, that they have a scheme of their own which they are desirous of trying, and therefore, will not pay proper attention to the plaintiff's machinery. *Morris v. Coleman* is in opposition to *Kemble v. Kean*, and as to the question of lien, although the plaintiff might not be able to interfere to prevent the removal of the machinery, still, if the effect of a sale by the defendants, with whom the plaintiff contracted, would be to destroy the plaintiff's claim, he has a right to prevent such sale. The claim of the plaintiff is to participate in profits, and although the Court cannot compel the defendants actively to employ the vessels and make a profit, yet it can prevent them from doing any acts which may deprive the plaintiff of the benefits which he contracted to receive. Thus, in the recent case of *Whitaker v. Howe* before his lordship, although the Court determined that it could not specifically perform the contract by compelling the defendant to use his endeavours to secure clients to the plaintiff, yet it restrained him from interfering to deprive the plaintiff of the benefits which he had contracted for.

The *Master of the Rolls*, after explaining the nature of the application, and describing the plaintiff's invention, which his lordship stated was very ingenious, said that it was tried on the *William Fawcett*, which belonged to some of the defendants, and was said to have succeeded: it was not proved, but he would assume that to a certain extent it was successful. The plaintiff entered into an agreement with some of the defendants by which he agreed within six months, well and effectually to apply his invention to the *Tagus*, *Braganza*, and *Royal Tar*, and such other vessels as belonged to the defendants, at an expence of 120*l.* to each vessel. He proceeded to make alterations in the vessels specified in the agreement, and also in the *Liverpool*, which was not in the agreement, and he says that he applied the principle of his invention to the *Royal Tar* and the *Braganza*, and as to the rest was willing to do so, but was prevented by the defendants, who, to defeat his rights, had contracted to sell the vessels. It appeared

that the plaintiff knew at the time he entered into the contract, that an agreement for sale was contemplated between the several defendants. The questions, then, suggested by the facts, were: what was intended to be done; what was done; and whether that which was done, was in performance of what was intended. No doubt the intention was to obtain distillation of the volatile particles of the coke, not combustion. Something very like it was produced in the Fawcett, but nothing like it in the other vessels, so far as the plaintiff had proceeded. [His lordship here in a very luminous manner explained the *modus operandi*, and then proceeded.] Difficulties having arisen in the execution of the plan, they were attempted to be met by contrivances not within the patent. These experiments continued for a considerable time, and produced inconveniences in the management of the vessels; there was consequently good reason on the part of the defendants to say they would not go on. If a person agrees within a certain number of months to apply a particular invention, it must be understood that he has the means of doing what he contracted to do, and that the plaintiff in this case intended to give the defendants an exclusive right to something they could not otherwise obtain. In both points the plaintiff has failed: he was not prepared to fulfil his engagement, for the very circumstance of his changing from time to time in order to produce the practical effect sought, and his at length having recourse to means which were open to all the world, shewed this. The injunction must be refused on the ground that the plaintiff had not the means to apply the invention in the manner intended, and the defendants did not therefore obtain the benefits contemplated.

Injunction refused. Costs of the application to be costs in the cause.—*Bourne v. Oriental and Peninsular Steam Navigation Company*, March 18th and 19th, 1841.

Queen's Bench.

[Before the Four Judges.]

PRACTICE.—MANDAMUS.

The Court will not hear and decide a question on the construction of a local act when brought under discussion by an arrangement between the parties.

In this case there had been an application for a *mandamus* to be directed to the defendants, commanding them to issue their warrant to the sheriff to summon a jury and assess the amount of compensation claimed by a party whose house was situated within fifty yards of the railway line, and who complained first, that his business was much diminished by the removal of persons from the neighbourhood, and therefore claimed compensation for consequential injury; and next, that his house was constantly shaken in a disagreeable manner by the arrival and departure of the railway trains. The party had gone before the coroner,

when it was objected, that the only proper course of proceeding was to apply to this Court for a *mandamus* for the sheriff to summon a jury and hear the case. It was then arranged (according to the statement of the counsel for the complainant) that the present application should be made to the Court, in order to take the opinion of the Court on the construction of the act establishing the railway. This rule having accordingly been obtained,

Sir F. Pollock was now about to argue it, and take the opinion of the Court whether, on the construction of the act, the proper course was by *mandamus* or not.

The Court refused to hear the argument, observing that the Court was not bound to hear arguments and give a decision on a point of law when circumstances had not made it ripe for decision. The parties must act on their own responsibility as to taking a *mandamus* or not, and when a real question arose, the Court would be prepared—and not till then,—to consider and adjudicate on the act.

The Queen v. The Directors of the Blackwall Railway, E. T. 1841.

COURT OF REQUESTS.—DEBT.—ACTION.

Where A. was employed as agent by a great many persons who sued for debts in a Court of Requests to receive money for them, and B., an officer of that Court, actually received the money, and on being shewn an account made out by A. of those monies, promised A. to pay them: Held, that A. might well maintain an action of debt for money had and received in respect of all the sums so received by B.

Debt for money had and received, and on an account stated. Plea, the general issue. The plaintiff acted as a collector of debts in the Court of Requests at Sheffield, and was employed by different persons who sued for debts in that Court. The defendant was the clerk of the Court, and was appointed to his office by the steward of the Court under the provisions of the local act by which it was established. The defendant had received a great many of the debts which were paid under the orders of the Court, and had admitted to the plaintiff that he had so received them. The plaintiff claimed to be the agent of the persons to whom they were due, and now brought this action to recover them. At the trial of the cause before Mr. Justice Maule at the last assizes at York, it was proved that the plaintiff had made out an account of the sums claimed from the defendant; that the defendant admitted that he had received them, and promised A. to pay them. Verdict for the plaintiff.

Mr. W. H. Watson now moved for a rule to shew cause why a nonsuit should not be entered. The objection to the plaintiff's right to maintain the action is, that each demand ought to be the subject of an action at the suit of the person to whom the money is due, and all the demands cannot be recovered in one action

by a person like the plaintiff, who claims to be the agent of all the persons entitled.

Per Curiam.—The plaintiff is the *bond fide* agent of all these parties—he has made out an account of the monies received by the defendant for them—the latter has admitted its correctness, and promised the plaintiff to pay. This is sufficient, under these circumstances, to maintain the action.

Rule refused.—*Gillott v. Appleby*, H. T. 1841. Q. B. F. J.

GAMING.

A wager above 10l. in amount upon a horse race which has been actually run before the making of the wager, is not illegal within the statutes against gaming.

Assumpsit. The declaration stated that on the 15th of May, 1839, a certain race, called the Derby, had been run by certain horses, and been won by one of the said horses; to wit, by a certain horse named Bloomsbury; and thereupon afterwards, to wit, on the 16th day of May, 1839, in consideration &c. (setting out in the ordinary way a bet of 50l. to 1l. that Bloomsbury had not won,) allegation that Bloomsbury had won; breach, non-payment of the 50l. Plea, that the consideration for the promise in the declaration mentioned was a certain illegal bet upon the result of a horse race, to wit, the race mentioned in the declaration, concluding with a verification. To his plea, the plaintiff demurred specially, assigning several causes of demurrer.

Mr. Fortescue, in support of the demurrer.—The plea is clearly bad on many grounds,—it consists either of an allegation of mere matter of law, or it is a mere argumentative traverse of the facts as stated in the declaration; it introduces no new matter, and should not therefore conclude with a verification; it neither directly traverses nor does it avoid the cause of action as stated in the declaration; otherwise than by a bare allegation of illegality, which is insufficient.

Mr. Henderson, contra. The declaration is bad, as shewing a mere bet upon a horse race, for a sum greater than the law allows. It can make no difference whether the race had been run at the time of the bet or not. It falls directly within the provisions of the 9 Anne, c. 14, being a bet upon a game within the provisions of that statute. It is very analogous to a wagering policy, lost or not lost, where the insured has no interest in the event. Here he had none; such a bet falls within the statute 14 G. 3, c. 48. It was indeed held in *Murch v. Pigot*,^a that a bet between the plaintiff and defendant upon the lives of their respective fathers was not illegal, but the correctness of that decision has been much doubted. But the stat. 18 G. 2, c. 34, s. 8, is express upon the subject, that statute prohibiting any bet upon any subject above the amount of 10l. In *Good v. Elliott*,^b the amount of the bet was un-

der 10l., and that was probably the ground of the judgment. In the present case it exceeds that sum. The case falls directly within both the letter and spirit of the acts against gaming, and the judgment must be for the defendant.

Mr. Fortescue in reply.—The words of the statute of Anne clearly exclude such a case as this. That statute prohibits bets only on the sides of such as do play. Can it be contended that this is a bet on the side of a person playing? Suppose the bet had been whether Smolensko, or any of the celebrated horses of other days had run, or had won a particular race: could it be said that that was any thing more than a bet upon a naked fact? Such a bet was held good in *Good v. Elliott*; and here it is submitted that the bet is upon the existence or non-existence of a naked fact. *Good v. Elliott* expressly decides that such a bet is not within 14 G. 3, c. 48; and as to the statute of 18 G. 2, c. 34, being supposed to apply to all bets, it is singular, that in the very many cases which, since that statute have been decided, the decisions have been invariably put upon other grounds, namely, public policy, immorality, and indecency; and it has been always assumed, and is indeed so laid down in most of them, that all wagers not open to such objections, are valid. In *Gilbert v. Sykes*,^c the wager was 100l., and it is therefore clear that the amount alone has not influenced the decisions, and that the statute is not so generally applicable as it is assumed to be, so as to prohibit all wagers whatever above the amount of 10l.

Cur. adv. vult.

Lord Denman delivered judgment.—This was an action to recover the sum of 50l., being the amount of a wager laid in favour of a horse, called Bloomsbury, on the 16th May, 1839, upon a race called the Derby, which had been run on the previous day. The question for the consideration of the Court was, whether this was an illegal bet, as a bet of 50l. on a horse-race. In substance the question was, whether a wager above the legal amount upon a horse-race, which had already been run, was illegal. The words of the statute 9 Ann. c. 14, were, "If any person shall win, at any one time, by play, or bearing a part in shares or wagers, or by betting on the sides of such as do or shall play above the sum of 10l., and being convicted thereof, shall forfeit five times the value," &c. It followed from this provision for a conviction for the offence of winning such a bet, that no action could be maintained to recover a bet so won. But could it be said that the plaintiff here was betting on the side of such as should play? On the facts of this case there was nothing in the course of being done, nor did the wager contemplate any thing to be done at the time it was made. There was no latitude of construction that would bring this case within the statute. The wager did not depend on the judgment of the person making it, but on the accuracy of the information in the possession of one or the other party. There was nothing in the act to

^a 5 Burr. 2802.

^b 3 Term R. 693.

^c 16 East. 150.

prohibit such a wager, nor anything to prevent the plaintiff from recovering it when won. The judgment must therefore be for the plaintiff.

Pugh v. Jenkins, E. T. 1841. Q. B. F. J.

EVIDENCE.—AGENT.

Though the precise terms of a contract for the delivery of goods are not in evidence, a statement made by an agent at a time subsequent to the contract, namely, on the delivery of the goods, is not to be considered as made within the scope of his agency, and cannot therefore be received in evidence against the principal.

Assumpsit for the hire of a ram of the plaintiffs in the year 1836 ; plea, *nun quam indebtedus*. This cause was tried before the undersheriff of Norfolk, when a verdict was found for the defendant. By the evidence produced on the part of the plaintiff, it appeared that he lived in Northamptonshire, and that he was tenant of a farm in Norfolk, which, at the time of the transactions which gave rise to the present question, was entirely managed by his brother, Benjamin Palmer. Benjamin Palmer took a quantity of rams belonging to the plaintiff to Shouldham fair, a few days before Michaelmas 1836, and the defendant was also there. After examining one of the rams, the defendant and Benjamin Palmer had some conversation, which was not heard by the witnesses ; but, at a subsequent part of the day, the defendant told three or four persons that "he had hired one of Will. Palmer's rams." No other proof of the terms of the contract was given. On the following Tuesday the plaintiff's shepherd delivered the ram to the defendant at Lynn market, Lynn being several miles distant from Shouldham. B. Palmer was present at the time of the delivery.

On the part of the defendant it was proved that in 1835 the defendant had bought a ram of the plaintiff, with which he had cause to be dissatisfied, and that at the time of the delivery at Lynn market, B. Palmer said, in the hearing of the defendant and several other persons, that "Gay was to have the use of that ram for nothing, because the one he bought had proved no stock getter." B. Palmer was dead at the time of the trial. This evidence was objected to, but admitted, and the defendant had a verdict.

Mr. Gunning, on a former day, obtained a rule to shew cause why the verdict should not be set aside and a new trial had, on the ground of the improper admission of this evidence. It was a statement made by the plaintiff's agent, not as a part of the contract, but at a time when the contract was complete ; he was, therefore, not acting within the scope of his authority. This is not like the case of *Peto v. Hague*,^a where what the agent said directly related to the matter under consideration, on which he had authority to treat. The statements of an agent must be strictly within the

business in which he is employed. *Guth v. Howard*.^b Nothing said by an agent after a contract is complete can be received in evidence to modify that contract.

Mr. Palmer now shewed cause, contending that the contract was incomplete until the ram had been delivered ; and that, consequently, as the plaintiff had not shewn any express contract, the statement of B. Palmer was admissible as part of the *res gestæ*. *Langhorn v. Allnutt*.^c In an action against the sheriff for a false return, what the bailiff to whom the writ is directed says to a party interested, between the delivery of the writ to him and the date of the return, is evidence against the sheriff. *North v. Miles*.^d What is said by an agent respecting a contract or other matter in the course of his employment, such matter being the foundation of the action, is good evidence to affect the principal. *Peto v. Hague*.^e That rule applies here.

Per Curiam.—The contract was certainly complete in this case without the delivery, and the agent had no authority to make the admission which he is stated to have made at Lynn market. The evidence was improperly admitted, and the rule must therefore be absolute.

Rule absolute.—*Palmer v. Gay*, E. T. 1840. Q. B. F. J.

Queen's Bench Practice Court.

DISTRINGAS.—EXPIRATION OF WRIT.—SUMMONS.—CONTINUANCE OF PROCESS.

If a writ of summons has been issued, and attempts made to serve it unsuccessfully but the Court has thought it right to direct a writ of distringas to issue, and those proceedings have taken place previous to the expiration of the four months, during which, according to the provisions of the Uniformity of Process Act, the process is in force, the writ of distringas, though issued after that expiration, is regular.

In this case a writ of summons had been issued for the commencement of the action, and various attempts made, but without success, to serve the writ. An affidavit was made stating those attempts, pursuant to the practice of the Court, and an application, after the expiration of four months from the issuing of the writ, was made to the Court for a *distringas*, all the necessary steps for the purpose of obtaining it having been taken previous to that expiration. The writ was accordingly issued.

James moved for and obtained a rule *nisi* to set aside the *distringas*, on the ground that it had issued after the expiration of four months from the issuing the writ of summons.

Cowling shewed cause against the rule, and

^b 1 Moore & Scott, 628 ; 8 Bing. 451 ; 5 Car. & P. 346.

^c 4 Taunt. 511.

^d 1 Camp. 389

^e 3 Esp. 134.

^a 3 Esp. 134.

contended that the fact of the writ of summons having been issued four months could not at all interfere with the right of the plaintiff to issue a writ of *distringas* after the expiration of those four months, as all the efforts to serve the writ, and on which efforts the right to issue the *distringas* depended, had been made before the writ of summons expired. There was nothing in the Uniformity of Process Act to shew that there was any thing objectionable to such a course being pursued. It was true, that a writ of summons was only in force for four months; but it did not follow that a writ of *distringas* must issue during the time that the writ of summons was in force. The provision would seem to lead to an opposite conclusion.

James supported the rule, and contended that the intention of the legislature must have been that the *distringas* should be issued in continuation of the writ of summons; but if that had expired before the latter was issued, it was impossible that it should be considered as a continuance of it.

Cur. adv. vult.

Coleridge, J., thought that there was no doubt, on looking at the words of the statute, that the summons having expired was no ground for considering a writ of *distringas* irregular which issued on an affidavit disclosing efforts to serve that writ of summons during the period of its being in force. Some doubt had been thrown on this view by the Court of Common Pleas in two cases, but that court had reconsidered its opinion, and came to an opposite conclusion. On the words of the statute, as well as in conformity with the later decision of the Common Pleas, the present rule for setting aside the writ of *distringas* must be discharged.

Rule discharged.—*Bromage v. Ray*, E. T. 1841. Q. B. P. C.

JUDGMENT AS IN CASE OF A NONSUIT.—AFFIDAVIT.—DATE.—AMENDMENT.—JURAT.

In shewing cause against a rule for judgment as in case of a nonsuit, if it appears that the date in the jurat is wrong in the affidavit used to shew cause, the rule must be made absolute, but the Court may, under particular circumstances, allow the jurat to be amended.

J. Bayley moved to make absolute a rule nisi for judgment as in case of a nonsuit. As a preliminary objection to the affidavit on which it was sought to shew cause, he contended that the date in the jurat was wrong. The date of the jurat was the 9th May, 1840, and the rule for judgment as in case of a nonsuit was obtained on the 17th April, 1841. If the date was taken literally, the affidavit was sworn before the rule was obtained. If the date was considered as applying to the year 1841, the 9th May had not yet arrived. In either way the date must be considered as wrong, and the affidavit could not be read. No cause was consequently shewn against the rule, and therefore it must be made absolute.

O'Malley supported the rule, and contended that as the objection taken on the other side was a mere matter of form, the Court would allow the affidavit to be amended in the jurat.

Coleridge, J., expressed his unwillingness to allow an error arising from such gross negligence as that which must have caused the error in question, to be amended, but for once allowed the amendment.

Rule enlarged.—*Kelly v. Dignam*, E. T. 1841. Q. B. P. C.

JUDGMENT AGAINST THE CASUAL EJECTOR.—LANDLORD AND TENANT.—AFFIDAVIT.

If an application is made for judgment against the casual ejector, where the landlord proceeds under the 4 G. 2, c. 28, the affidavit supporting the application must shew that there is no sufficient distress to countervail "six months rent" on the premises, and not "the arrears of rent" generally.

W. H. Watson moved for judgment against the casual ejector. It was a proceeding under the 4 G. 2, c. 28, no sufficient distress to countervail the arrears of rent remaining on the premises. The affidavit on which he moved stated that several years' rent were in arrear, and then proceeded to state that no sufficient distress remained on the premises "to countervail the arrears of rent." This, it was submitted, was a sufficient affidavit.

Coleridge, J., was of opinion that the affidavit was insufficient. Although there was not sufficient distress on the premises to countervail the rent which it appeared was in arrear for several years, there might be sufficient to countervail six month's rent. The latter state of facts was quite consistent with the affidavit produced. The affidavit must consequently be amended.

Rule refused.—*Doe d. Briggs v. Roe*, E. T. 1841. Q. B. P. C.

ATTORNEY.—ARTICLES.—LUNATIC.—SERVICE.—ASSIGNMENT.—CALCULATION OF TIME.

After a clerk has served an attorney for a certain portion of his five years, if his master becomes insane, and he continues to serve a portion of his time under an agent of the attorney, that time cannot reckon in the service requisite to authorize his admission.

In this case a clerk had been articulated to an attorney for five years. After serving about two years and a half, his master became insane. He then continued to serve for some time with a person who carried on the business of the insane attorney as his agent. The business was afterwards transferred to a person, who carried on the business on his own account. With him, also, the clerk continued to serve. The question was, whether the time so served with the agent and the assignee of the business, could be reckoned in the period of his service. The continued insanity of the original master rendered new articles necessary, and the in-

quiry was therefore requisite in order to determine the period for which the new articles should be executed.

Knowles applied to correct the former articles, and allow the clerk to enter into new ones. The service under the agent and the assignee of the business, would, it was submitted, properly reckon in the five years, as if the lunatic attorney had recovered, and recognized the service, it would have been good service.

Coleridge, J., thought that under the circumstances the service after the lunacy of the master could not reckon in the five years; and therefore thought when the original articles had been cancelled, that the new articles must be entered into for a period of five years, less the time for which the clerk had served previous to the access of insanity.

Rule accordingly.—*Ex parte Grant, E. T. 1841. Q. B. P. C.*

CHANCERY SITTINGS.

Trinity Term.

Before the Lord Chancellor.

AT WESTMINSTER.

Saturday .. May 22	Appeal Motions.
Monday 24	Petitions and Appeals.
Tuesday 25	} Appeals.
Wednesday 26	
Thursday 27	Appeal Motions & Ditto.
Friday 28	} Appeals and Causes.
Saturday 29	
Monday 31	
Tuesday .. June 1	
Wednesday 2	
Thursday 3	Appeal Motions & Ditto.
Friday 4	} Appeals & Causes.
Saturday 5	
Monday 7	
Tuesday 8	
Wednesday 9	
Thursday 10	} Appeal Motions & Ditto.
Friday 11	
Saturday 12	

Such days as his Lordship is occupied in the House of Lords excepted.

Before the Vice Chancellor.

AT WESTMINSTER.

Saturday .. May 22	Motions.
Monday 24	Petition Day.
Tuesday 25	} Remaining Petitions, Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Wednesday 26	
Thursday 27	Motions.
Friday 28	} Unopposed Petitions and Short Causes previous to general Paper.
Saturday 29	
Monday 31	} Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Tuesday .. June 1	
Wednesday 2	

Thursday 3	Motions.
Friday 4	} Unopposed Petitions and Short Causes previous to general Paper.
Saturday 5	
Monday 7	} Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Tuesday 8	
Wednesday 9	
Thursday 10	
Friday 11	} Unopposed Petitions and Short Causes and Do.
Saturday 12	

Before the Master at the Rolls.

In and after Trinity Term, 1841.

AT WESTMINSTER.

Saturday .. May 22	Motions.
Monday 24	Petitions in Gen. Paper.
Tuesday 25	} Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Wednesday 26	
Thursday 27	Motions.
Friday 28	} Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Saturday 29	
Monday 31	
Tuesday .. June 1	
Wednesday 2	
Thursday 3	Motions.
Friday 4	} Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Saturday 5	
Monday 7	
Tuesday 8	
Wednesday 9	
Thursday 10	} Petitions in Gen. Paper.
Friday 11	
Saturday 12	Motions.

AT THE ROLLS.

Monday 14 { Short Causes after swearing in the Solicitors.

Short Causes, Consent Causes, and Consent Petitions, every Tuesday at the Sitting of the Court.

COMMON LAW SITTINGS.

In and after Trinity Term, 1841.

Queen's Bench.

In Term.

MIDDLESEX.	LONDON.
Monday May 24	
Tuesday 27	
Thursday June 10	Friday June 11

After Term.

Monday June 14	Tuesday June 15 (to adjourn only.)
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The Court will sit at eleven o'clock in Term, in Middlesex; at twelve in London; and in both at half-past nine after Term.

Long Causes will be postponed from the 24th and 27th of May to the 14th of June; and all other Causes on the Lists for the 24th

and 27th of May, will be taken from day to day until they are tried.

Undefended Causes only will be taken on the 10th of June.

Short defended as well as undefended Causes entered for the Sitting on June 11th, will be tried on that day, if the plaintiffs wish it, unless there be a satisfactory affidavit of merits.

Causes standing over with judgment of the Term in Middlesex, will be taken on the 14th of June.

Sychequer of Pleas.

In Term.

MIDDLESEX.

First Sitting	Wednesday ..	May 26
By Adjournment....	{ Thursday.....	27
	{ Friday	28
Second Sitting	Friday.....	June 4
By Adjournment....	{ Saturday.....	5
	{ Monday	7

LONDON.

First Sitting	Tuesday	June 1
Second Sitting	Tuesday	8
By Adjournment....	Wednesday.....	9

After Term.

MIDDLESEX.

LONDON.

Monday	June 14		Tuesday	June 16
			(To Adjourn only.)	

The Court will sit, during Term, at ten o'clock.

LAW BILLS IN PARLIAMENT.

House of Lords.

For holding Petty Sessions and Summary Trials.
[In Committee.] Earl Devon.

To limit the Criminal Jurisdiction of the Quarter Sessions. [For 2d reading.]

For rendering a Release as effectual as a Lease and Release. [Waiting for Royal Assent.]

Tithes Recovery. [For 2d reading.]

Double Costs, &c. [For 2d reading.]

Costs in frivolous Suits. [For 2d reading.]

To amend the Law of Principal and Factor.

House of Commons.

For facilitating the administration of justice (in Chancery), No. 1. Attorney General.
[To consider Report.]

To facilitate the Administration of Justice in the House of Lords and Privy Council, No. 2. Sir E. Sugden.

[In Committee.]

County Courts. Mr. F. Maule.

[To consider Report 17th May.]

Bankruptcy, Insolvency, and Lunacy.

[In Committee 17th May.]

To remove objections to the admission of evidence on the ground of interest.

[In Committee.] Mr. C. Buller.

To allow Writs of Error in *Mandamus*.

Sir F. Pollock.

Poor Law Amendment. [In Committee.]

For the Registration of Parliamentary Electors.

[In Committee.] Lord John Russell.

For the better regulation of Railways.

Mr. Labouchere.

County Coroners' Election. Mr. Packington.

[In Committee.]

Drainage of Lands.

Mr. Handley.

[In Committee.]

Copyhold and Customary Tenures.

[Report on May 19.] Mr. Hope.

Administration of Justice in Boroughs.

[In Committee.] Attorney General.

To facilitate the Transfer of Real and Personal Property held in trust for Charitable Purposes.

Mr. James Stewart.

[In Committee.]

Designs Copyright. [For 2d reading.]

To appoint a Public Prosecutor.

[For Select Committee.] Mr. Ewart.

To exempt Tithes from Parochial Assessments.

Mr. Hodges.

Middlesex Sessions. [In Committee.]

County Bridges. [In Committee.]

Punishment for Offences against the Person.

[In Committee.] Lord J. Russell.

Punishment for Embezzlement.

[For 2d reading.] Lord J. Russell.

To amend the Law of Sewers.

[In Committee.]

Enrolment of Burgesses.

[In Committee.]

Turnpike Acts Amendment.

[In Committee.]

Stamp Duties on Law Proceedings.

[For 2d Reading.]

THE EDITOR'S LETTER BOX.

The Analytical Digest of all Cases reported in all the Courts during the last three months, forming the Second Part of the Digest for 1840-41, has just been published.

We are not aware of the progress of the Attorneys' Clerks' Prize Fund, nor whether a country clerk may enrol himself a member of the Association. We presume that in due time the plan will be fully explained.

The letters of H. C. and X. have been received.

* * * We hope there will be a full attendance on *Tuesday*, the 18th instant, of the Members of both branches of the Profession, at the Anniversary Meeting of the *United Law Clerks' Society*, when Sir F. Pollock will kindly preside.

The Legal Observer.

SATURDAY, MAY 22, 1841.

——— “Quod magis ad nos
Pertinet, et nescire malum est, agitamus.

HORAT.

LETTERS ON THE COURT OF CHANCERY.

LETTER IX.

To the Editor of the Legal Observer.

SIR,

IN my last letter^a I promised you one more letter. I have been somewhat long in fulfilling my promise, and I certainly did not expect to write it under circumstances so melancholy. What, Sir, is there to be no hope of redress to the suitor? Is year after year of disappointment to roll over his head? Is he to find his just right to redress admitted by all, but to find no hand to help him? Are his dearest interests to be made the mere sport of party? This, I fear, is his lot; as the wise men of the day shake their heads, and give up the Chancery Bill as lost for the Session.

And why is it to be lost? I would respectfully say to one party. “Admit that the Chancellor of the Exchequer has brought in an unsuccessful budget;—grant that brown sugar should be at 63s.;—take all your timber from Canada, if it so please you; and all your corn from the broad lands of Great Britain;—but is all this to prevent the suitor from having his cause heard? Will you, from mere party spleen, or from the chance that a place might be filled up by a political opponent, stop a measure which may give a speedy redress to the misery of thousands?”

But is the other party entirely without blame in the matter? To them I would say, “Are you sincere in your wish to remedy the evils of the Court of Chancery? If so, bring the bill forward; be beaten upon it. Do not lose any time. Do not

let mere party conflicts interfere. Make it your object to carry it.

“A debate of a week on sugar, another week on timber, and another on corn, and perhaps the Session will be over, and the hapless suitor will be where he was, to take the chance of fresh conflicts of parties; to find all sides agree in the truth of his grievances, and none take the trouble to remedy them; to see his dearest interests sacrificed to this great man’s liking, or that great man’s disliking, or this noble lord’s presence, or that noble lord’s absence?”

How stand the facts on the last returns moved for in the present Session by Sir Edward Sugden. I think they prove one or two very important points; they prove that there is a delay between the setting down for hearing and the hearing, of nearly three years. They prove, also, that there is no sufficient judicial power for the disposal of original causes. A glance at them will sufficiently shew this. Of the causes heard by the Lord Chancellor after the long vacation, 1839, and ending in Trinity Term, 1840, the first was set down in Hilary Term, 1837.

The Vice Chancellor, in the same period, heard 47 causes; the earliest of these was set down in 1837; so that the same period elapsed of nearly three years before hearing. Then there is a return of original causes in Michaelmas Term, 1840, and Hilary Term, 1841, in all 87. The first of these was set down in 1838, so that here is the same arrear. These returns prove that there is a delay of nearly three years in only one stage of the cause, in the first hearing, which is repeated on the hearing on further directions; and wherever the cause is set down, this same delay occurs.

Well, Sir, but this is not all that is proved by these returns. There appears in Hilary Term, 1841, to have been 547 matters for

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^a See 21 L. O. 210.

hearing: and what was the judicial power which was to be brought to bear upon them? There was only the Lord Chancellor and the Vice Chancellor, for I am not now considering the Rolls. The Lord Chancellor for the next six months would be almost unable to attend to original causes. If he kept down the appeals, it is probably all that he could do; for his time would be almost entirely taken up with the business of the House of Lords, and his other political and official duties. There is only then the Vice Chancellor; and how many causes did that learned judge hear in Michaelmas Term and Hilary Term? Only 15, and it is not probable that he could hear many more causes in the next six months. There were then 547 matters to be disposed of, and it becomes interesting to inquire how many causes a judge can hear in a year? There is considerable information on this subject in the valuable evidence before the House of Lords last Session. The tendency of that evidence is to shew, that allowing for new business, a judge cannot keep under more than 150 adverse causes per annum. Now, if this be so, how could one additional judge dispose of 547, or nearly three years' work. The returns, therefore, make out the necessity for two new judges; and if any one should doubt about it on the ground of expense, I will request them to consider the needless and burthensome expense and delay of the present system. By the evidence it appears that the term fees alone, in three recent years, were 8500*l.* a year, or in three years 25,800*l.*, for which the suitor gets nothing whatever. Now, Sir, is this a system which should continue a moment longer?

We must take this bill, then, as the first step towards a complete reform; and I most earnestly hope that neither of the great parties of the state, whatever other bills may be lost, will permit this bill to be sacrificed, and the much-raised hopes of the suitor to be again disappointed.

I am, Sir,
Your's with much regard,

PETER.

Lincoln's Inn, May 18th, 1841.

PRACTICAL POINTS OF GENERAL INTEREST.

LIFE INSURANCE.

KNOWING how interesting any thing connected with life insurance is to our readers, we may mention the following recent case.

Upon a policy of assurance on the life of *A.*,

the premium became due on the 15th of March, but was not paid until the 12th of April, when the country agent of the insurance company, through whom the insurance had been effected, gave a receipt for the amount of the premium. The instructions given by the company to the agent were that the premium on every life policy must be received within fifteen days from the time of its becoming due: If not paid within that time, that he was to give immediate notice to the office of that fact, and in the event of his omitting to do so, that his account should be debited for the amount after fifteen days had expired. No notice was given to the company of the non-payment of the premium within the fifteen days: it is now therefore entered in their books as paid on the 15th of March, and the agent was debited for the amount. It was held on these circumstances that the mere debiting the agent with the premium could not be considered as a payment to the company by the assured; secondly, that as the agent had no authority to contract for the company, the fact of his receiving the money after the expiration of the fifteen days, and the entry in the company's books debiting him with the amount were no evidence of a new agreement between the company and the assured. Mr. Baron Parke, said, "Greenwood is not the general agent of the company; he is merely an agent with limited powers to receive premiums; he had authority to bind the company in respect of that money, as if it was paid to the company itself; but he had no other power, and therefore it seems to me that the payment made to Greenwood, and for which he gave a receipt, dated the 12th of April, is no proof of the agreement on the part of the company to enter into and make a new policy of insurance, on the terms of the old one, varied only as to the time at which the premiums were to be paid. The memorandum on the back of the receipt, is a memorandum made by the company, and shews that, unless the money was paid in fifteen days, the policy was at an end altogether. It is impossible to consider the debiting of the agent with the amount of the premium as a payment on the original day, according to the allegation in the first count: the only question is, did the company mean to make themselves liable as on a new contract? It seems to me that they did not, and that the meaning of the transaction was merely to keep their agents right, and in case of neglect to be able to come upon them for the amount of the premium by way of penalty; but they did not mean thereby to make themselves liable for the amount of the policy. It is only on the ground that they became liable upon a new contract, that any anything can be made of the case on the part of the plaintiff. It appears to me that this was purely a mode of keeping their own agents in order, by holding over them *in terrorem* that they should be responsible for the amount of money not received. I think therefore that the verdict is right, and ought not to be disturbed." *Gurney, B., and Rolfe, B., concurred. Avey v. Fernie, 7 M. & W.*

The following case bears on the same point: Where one, as a member of a life assurance society for the benefit of widows and female relations, entered into a policy of insurance with the society for a certain annuity to his widow after his death, in consideration of a quarterly premium to be paid to the society during his life; and, by the rules of the society, if any member neglected to pay the quarterly premiums for fifteen days after they were due, the policy was declared to be void unless the member (continuing in as good health as when the policy expired) paid up the arrears within six months, and five shillings per month extra; and it was held, that a member insuring having died leaving a quarterly payment overdue at the time of his death, the policy expired, and that a tender of the sum by the member's executors, though made within fifteen days after it became due, did not satisfy the requisitions of the society. *Went v. Blunt*, 12 East, 183.

STEAM BOAT.

This was a suit by the sole owner of the *Ariel*, a collier of South Shields, for damage to the amount of £274, by the *Perth*, a Duquesne steamer. *Burnaby and Huggard* for the *Ariel*: *Phillimore and Adams* for the steamer. Sir John Nicholl said:—The *Ariel*, a brig of 215 tons and nine men, with a cargo, alleges that she was struck and damaged, about seven P. M. on the 4th of January, while standing out from the shore, at nearly high water (off Sizewell Bank), on the starboard tack, and all hands on deck, the wind being W. N. W., adverse to the collier, the night dark, and the weather hazy; that upon hearing the noise of paddles to windward, she was put about to stand for the shore on the larboard tack, and a lighted candle held on the weather side of the quarter deck; that as soon as the steamer was descried, the crew of the brig shouted, "Keep your helm hard a-port;" that there was no answer, the engines were not stopped, nor was her speed diminished, nor course altered; and that the steamer struck the brig violently, and then pursued her course; that the brig, the weather being favourable, got into Harwich. The rejoinder added, "that the collision was from the steamer not keeping more to the eastward, the place of collision being directly in the track of coasters between Yarmouth and Orfordness, and that many vessels were drawing up towards the land, to anchor during the ebb." On the part of the steamer it was alleged, "she was of 329 tons, had two engines of 150 horse power, thirty-two men, and two strong lights; that the large bell was rung about half past six, and thence every half minute; that a good look out was ordered, and the helmsman to be careful; that the master and mate were on deck, and that, as soon as the mate heard voices, and saw the topgallant sails, he called out, "Port the helm, and go astern;" but that before the order could be given to stop the engines, both vessels had come in contact, and that they soon separated, each going opposite courses. The *Perth* denied, "that she was

asked to stay by the *Ariel*, or was blameable." Such is an outline of the statements on either side, and there are affidavits pretty much to the same effect. Respecting steamers generally, they are a new species of vessels, and tell forth new rules and considerations; they are of vast power, liable to inflict great injury, and particularly dangerous to coasters, if not most carefully managed; yet they may, at the same time, with due vigilance, easily avoid doing damage, for they are much under command, both by altering the helm, and by stopping the engines; they usually belong to great and opulent companies, and are fitted out at great cost; and on these considerations, when they afford assistance, they obtain a large remuneration. The owners of sailing vessels have, I think, a right to expect that steamers will take every possible precaution. Such are the principles necessary to be observed in administering justice, in cases of this description, in the Court of Admiralty; and it is desirable that they should be known. It is admitted that the weather was hazy and foggy, and Barney, a passenger in the steamer, proves that they did not see the brig until her topgallant sails were visible; they then were close upon her, but did not see the hull; the fog, therefore, was dense and low, lying on the water, so that even the strong light on the bow would be useless, and even that on the funnel-head would hardly be sufficiently visible. The steamer, too, was going through the fog at the rate of twelve miles an hour, in a course where coasters are numerous, and yet she did not abate her speed, nor did she keep further out from the shore, and more to the eastward—which she could easily have done. Again, it is admitted by the steamer that she heard shouting, and that an order was given to port the helm,—a very proper precaution at that time—(and without which the brig might have been struck a-midships): but was that all that could have been done? Some time elapsed—the master went forward, and yet no orders were given to stop the engines; and I cannot understand why they were not directed to be stopped; it would have been a common precaution. My opinion is, that vessels of this class are bound to use the utmost care." The Court then addressed Captain Stanley Clarke and Captain Weller, two of the elder brethren of the Trinity House:—Having now stated the principles which the Court is disposed to uphold, and that it is incumbent upon the steamer to shew that there was no mismanagement; no blame imputable to her,—your opinion is requested, whether in this case, the steamer is answerable for the damage, or whether she is completely exonerated, as having done all in her power to avoid the collision? The senior Trinity Master replied:—We are of opinion that, considering the fog and other circumstances, the steamer ought to have reduced her speed one half; such a precaution was due to the safety of the upward bound vessels; as soon also as the shouting was heard, the engines should have been stopped: by our own experience, we know that a steamer can be

stopped in nearly her own length; the force of the blow would at least have been much weakened. The Court condemned the Perth in the damages and costs. *Perth, Spink*, 3 Hagg. 414.

CHANGES IN THE LAW.

IN THE PRESENT SESSION OF PARLIAMENT.

No. II.

LEASE AND RELEASE.

4 Vict. c. 21.

An Act for rendering a Release as effectual for the conveyance of Freehold Estates as a Lease and Release by the same parties.
[May 18th, 1841.]

1. *A release to be effectual although no lease for a year shall be executed. Release chargeable with the stamp duty to which the lease for a year would have been liable.*—Whereas it is expedient to lessen the expence of conveying freehold estates: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that every deed or instrument of release of a freehold estate, or deed or instrument purporting or intended to be a deed or instrument of release of a freehold estate, which shall be executed on or after the fifteenth day of May one thousand eight hundred and forty-one, and shall be expressed to be made in pursuance of this act, shall be as effectual for the purposes therein expressed, and shall take effect as a conveyance to uses or otherwise, and shall operate in all respects both at law and equity as if the releasing party or parties who shall have executed the same had also executed in due form a deed or instrument of bargain and sale or lease for a year for giving effect to such release, although no such deed or instrument of bargain and sale or lease for a year shall be executed; provided that every such deed or instrument so taking effect under this act shall be chargeable with the same amount of stamp duty as any bargain and sale or lease for a year would have been chargeable with (except progressive duty) if executed to give effect to such deed or instrument, in addition to the stamp duties which such deed or instrument shall be chargeable with, as a release or otherwise, under any act or acts relating to stamp duties.

2. *The recital or mention of a lease for a year in a release executed before the passing of this act, to be evidence of the execution of such lease for a year.*—And whereas many deeds or instruments of bargain and sale or leases for a year, to give effect to deeds or instruments of release of freehold estates heretofore executed, have been lost or mislaid; be it enacted, that where, in or by any deed or instrument of re-

lease of freehold estates executed before the fifteenth day of May one thousand eight hundred and forty-one, any deed or instrument of bargain and sale or lease for a year for giving effect to such deed or instrument of release shall be recited, or by any mention thereof in such deed or instrument of release appear to have been made or executed, such recital or mention thereof shall be deemed and taken to be conclusive evidence of the deed or instrument of bargain and sale or lease for a year so recited or mentioned having been made and executed; and such deed or instrument of release shall also have the like effect as if the same had been executed after the fifteenth day of May one thousand eight hundred and forty-one, whether such deed or instrument of bargain and sale or lease for a year shall or shall not have been lost or mislaid, or may or may not be produced: Provided always, that this act shall not prejudice or affect any proceedings at law or in equity pending at the time of the passing of this act, in which the validity of any bargain and sale or lease for a year shall be in question between the party claiming under such bargain and sale or lease for a year and the party claiming adversely thereto; and such bargain and sale or lease for a year, if the result of such proceedings shall invalidate the same, shall not be rendered valid by this act.

3. *Construction of the word "freehold."*—And be it enacted, that in the construction of this act the word "freehold" shall have not only its usual signification, but shall extend to all lands and hereditaments for the conveyance of which, if this act had not been passed, a bargain and sale or lease for a year, as well as a release, would have been used.

4. *Act may be altered, &c.*—And be it enacted, that this act may be amended or repealed by any act to be passed during the present session of Parliament.

No. III.

ANNUAL INDEMNITY.

4 VICT. C. 11.

An act to indemnify such Persons in the United Kingdom as have omitted to qualify themselves for Offices and Employments, and to extend the time limited for those purposes respectively until the twenty-fifth day of March one thousand eight hundred and forty-two; and for the relief of clerks to attorneys and solicitors in certain cases.

[10th May, 1841.]

1.—1 G. 1, s. 2, c. 13. 13 Car. 2, s. 2, c. 1. 25 C. 2, s. 2, c. 2. 30 C. 2, s. 2. 8 G. 1, c. 6. 9 G. 2, c. 26. 18 G. 2, c. 20. 6 G. 3, c. 53. 9 G. 4, c. 17. 10 G. 4, c. 7. Persons who have omitted to qualify themselves as required by the recited acts indemnified and allowed further time.

2. Indemnity to those who have omitted to make and subscribe the oath and declaration required by the Irish act of 2 Anne.

3. Not to indemnify persons against whom final judgment has been given.

* For some observations on this act, see *ante*, p. 33.

4. Not to exempt justices acting without legal qualification.

5. Admissions to corporations may be stamped after the time allowed.

6. 'And whereas many persons who may have paid the proper stamp duties, either before or within six months after the execution of the contracts in writing entered into by them to serve as clerks to attorneys or solicitors, scribes, or notaries public in Great Britain, have omitted to cause affidavits to be made, and afterwards to be filed in the proper office, of the actual execution of such contracts, and have also omitted to cause such contracts and the indentures thereof, or the assignment of any such indentures, to be enrolled within the time in which the same ought to have been done; and many solicitors, attorneys, notaries public, and others, have omitted to take out annual certificates, or to enter the same in the proper office, and many infants and others may thereby incur certain disabilities: For preventing thereof, and relieving such persons, be it enacted, that every person who shall, either before or within six months after the execution of such contract or indenture, have paid the proper stamp duty in that behalf, and who at the passing of this act shall have neglected or omitted to cause any such affidavit or affidavits as aforesaid to be made and filed, or such contract or indenture or assignment to be enrolled, and who on or before the first day of Hilary term one thousand eight hundred and forty-two, shall cause such contract or indenture or assignment to be enrolled with the proper officer in that behalf, and one or more affidavit or affidavits to be made, and afterwards to be filed in such manner as the same ought to have been made and filed, in due time, shall be and is hereby indemnified, freed and discharged from and against all penalties, forfeitures, incapacities, and disabilities in or by any act or acts mentioned and incurred, or to be incurred for or by reason of such neglect or omission; and every such affidavit and affidavits so to be made, and which shall be duly filed on or before the first day of Hilary term one thousand eight hundred and forty-two, shall be as effectual to all intents and purposes as if the same had been made and filed within the respective times the same ought by the laws now in being for that purpose to have been made and filed; and that the respective officer or officers who ought to receive, file, enter or register such contract or indenture, or affidavit or affidavits, shall not refuse to receive, file, enter, or register the same, by reason that the attorney, solicitor, or notary public to whom such infant or other person shall have been articulated or assigned, or have contracted to serve, shall have neglected to take out his annual certificate, or to register the same, but such officer or officers are hereby directed and empowered to receive, file, enter, or register the same, notwithstanding such omission; and that every person who shall have regularly served any attorney or attorneys, solicitor or solicitors, notary public or notaries public, for the term of years required by law,

shall not be prevented or disqualified from being admitted an attorney, solicitor, or notary public, by reason of any omission of the person or persons to whom he served for the same term, or for any part thereof, having so neglected to take out his annual certificate or to register the same; provided that such person is otherwise entitled to be created and admitted to such office by the laws now in force relating thereto.

7. And be it enacted, that in case the attorney, solicitor, proctor, or notary to whom any person shall have duly served his clerkship under articles in writing for that purpose shall after such service of the clerk be struck off the roll in consequence of some defect in the service under the articles of clerkship or of the admission and enrolment of such attorney, solicitor, proctor, or notary, the person who has so duly served his clerkship shall not be prevented or disqualified from being admitted and enrolled as an attorney, solicitor, proctor, or notary, nor liable to be struck off the roll, if admitted, by reason of any such defect as aforesaid, provided that such clerk or person be otherwise entitled to be admitted and enrolled according to the laws now in force relating thereto.

8. And be it enacted, that no person who has been admitted and enrolled and in actual practice as an attorney, solicitor, proctor, or notary shall be liable to be struck off the roll for or on account of any defect in the articles of clerkship, or the registry thereof, or the service under such articles, or of his admission and enrolment, unless the application for striking him off the roll be made within twelve months from the time of his admission and enrolment.

9. And whereas by an act passed in the seventh year of the reign of his Majesty King George the Fourth, to allow, until the tenth day of October, one thousand eight hundred and twenty-six, the enrolment of certain articles of clerkship, and for other purposes therein mentioned, it was enacted that it should not be lawful for the commissioners of stamps, or any of their officers, to stamp under any pretence whatever, after the expiration of six months from their date, any articles of clerkship to attorneys or others, as therein specified: And whereas the using of the word "months" in the said last-mentioned act, in this respect, without the addition of the word "calendar," occasioned mistakes and inconveniences; Be it enacted, that from and after the passing of this act the word "months" used in the said last-mentioned act, so far as the same relates to the stamping of articles of clerkship to attorneys and others therein specified, shall be understood to mean calendar months.

10. And whereas several persons, bound to serve as clerks or apprentices to attorneys or solicitors have applied to have the indentures or contracts of such clerkship stamped after the expiration of six lunar and before the expiration of six calendar months from the date thereof; be it enacted, that it shall and may be lawful for the commissioners of stamps and taxes, or any of their proper officers, at any

time before the last day of Michaelmas Term one thousand eight hundred and forty-one, to stamp any articles of clerkship, contract, indenture, or other instrument whereby any person hath become bound to serve as a clerk or apprentice, in order to his admission as an attorney or solicitor in any of the courts of law or equity, although the period of six calendar months from the date thereof hath now elapsed, upon payment of the proper duty payable in respect of the same, and of the further sum of five pounds by way of penalty, provided it shall be proved to the satisfaction of the said commissioners that application was made to them or to their proper officers to have such articles, contract, indenture or instrument stamped within six calendar months from the date thereof.

11. Not to restore persons to any office avoided by judgment.

12. General issue.

CAP. 12. An Act to enable her Majesty's Commissioners of Woods to make a new Street from Coventry Street, Piccadilly, to Long Acre, and for other improvements in the Metropolis. [10 May 1841.]

NEW BILLS IN PARLIAMENT.

COSTS IN FRIVOLOUS SUITS.

THE following is Lord Denman's new bill as amended in committee. It recites the 3 & 4 Vict. c. 24, and states that it is expedient to remove all doubt whether plaintiffs in actions which had been commenced, and wherein verdicts had been returned before the said act of the last session for less damages than forty shillings, may not still be entitled to their full costs of suit, contrary to the manifest intentions of the same: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, that the said act of the last session shall be and is hereby repealed, so far as the same repeals or may be deemed to repeal the statute of the forty-third of Elizabeth, or the statute of the twenty-second and twenty-third of Charles the Second in respect to actions wherein verdicts had been returned before the passing of the said act of the last session.

2. That no plaintiff who had, before the passing of the said act of last session, obtained a verdict for a less amount of damages than forty shillings shall now be entitled to full costs, unless he was so entitled immediately before the passing of the said act of last session: Provided nevertheless, that if any such plaintiff shall have proceeded, since the passing of the said last-mentioned act, and before the third day of May one thousand eight hundred and forty-one, to tax his full costs on any such verdict so obtained for less than forty shillings, nothing in this act contained shall deprive such plain-

tiff of any remedy thereon which he may now have for the recovery thereof; but if the Court wherein the action in which such verdict was obtained was brought, or any Judge of her Majesty's Superior Courts at Westminster, shall be of opinion that such plaintiff is entitled to his costs by reason of the repeal of the said enactment of the forty-third of Elizabeth, or of the said enactment of the twenty-second and twenty-third of Charles the Second, by the said act of the last session of Parliament, then it shall be lawful for such Court or Judge, on the application of any defendant in such action, to stay all the proceedings on such application, upon payment of such costs as such Court or Judge shall think fit.

POINTS IN COMMON LAW PRACTICE, BY QUESTION AND ANSWER.

No. VI.

SUING IN FORMA PAUPERIS.

101. What is suing in *forma pauperis*?
102. Is a *defendant* in an action entitled to the benefit of the statute relating to proceedings in *forma pauperis*?
103. How is a person admitted to sue in *forma pauperis*?
104. What is the effect of the affidavit to be made in support of such application?
105. Are there any, and what cases in which the Court will refuse an order?
106. Are there any and what cases in which the Court will dispauper a plaintiff?
107. Are there any cases in which a pauper will be compelled to pay costs for any, and what, neglect of proceeding?
108. If the pauper succeed in his action, to what costs is he entitled against the defendant?
109. Can the defendant set off the costs of issues found for him against the plaintiff's costs?
110. Can a party be admitted to defend an indictment in *forma pauperis*?
111. What is the rule in Courts of Equity as to suing or defending in *forma pauperis*?
112. Is a pauper liable to any, and what costs upon an unsuccessful demurrer, or a writ of error?
113. At what stage of a suit must the application to sue in *forma pauperis* be made?
114. When a party has obtained permission to sue in *forma pauperis*, will the order for that purpose enable him to sue in another action?
115. Will an order be granted in a *qui tam* action; and if so, under what circumstances?
116. If the plaintiff should part with his interest in the subject matter, will the defendant be entitled to discharge the order?
117. Is a pauper liable to costs for unsuccessful interlocutory proceedings?
118. Can a pauper plaintiff, who fails in an action, bring another, on any and what terms?

REMOVAL OF COURTS FROM WESTMINSTER.

THE Select Committee of the House of Commons sat twice this week on the inquiry into the proposed removal of the Courts from Palace Yard. On Monday, Mr. Lynch in the chair: present also, Mr. Freshfield, Mr. Hayter, Mr. Strutt, and Sir Eardley Wilmot. On Tuesday the Solicitor-General in the Chair: present also Sir James Graham, Mr. Hayter, Mr. Hume, Mr. Lynch, Mr. Strutt, and Sir E. Wilmot.

The witnesses examined during the two days, were the Lord Chief Justice of the Court of Queen's Bench, Mr. Baxendale, Mr. Clarke, Mr. Faulkner, Mr. Gem, Mr. Loftus, and Mr. Maugham.

Some other witnesses are to be examined next Tuesday, including Mr. Barry, the architect; and the enquiry will then probably be concluded.

The case made out for the necessity of a change seems to be conclusive and irresistible. Three of the Judges of different Courts of Law and Equity have been examined; two Masters of the Law and Equity Courts; Counsel, both of the Common Law and Equity Bar; and Solicitors from various parts of the metropolis, engaged in large practice of various kinds,—in the city and the west-end, and the neighborhood of the Inns of Court,—and as well in proper business as in agency.

STUDENT'S CORNER.

TENANT IN TAIL.—POWER.

An infant tenant in tail, by articles of agreement previously to her marriage, and before the act for abolishing fines and recoveries, agrees to suffer a recovery to bar the entail, and to settle the estate on herself for life, then on her husband for life, then on the issue of the marriage in strict settlement, and in default of issue, to her heirs in fee. The marriage took effect, and a recovery is suffered on her attaining her majority, and by the deed to lead the uses the estate is settled on her for life; then to her husband for life, and the issue in tail, in strict settlement, according to the articles, but in default of issue a *power of appointment* is introduced, giving to the wife a power of disposing of the estate and to divest her heir, who would otherwise, according to the articles become entitled thereto. I have in vain endeavoured to find a similar case, and shall feel obliged by the opinion of any of your correspondents, whether the introduction of such a power is valid: there is no issue of the marriage.

CIVIS A.

JOINT TENANTS.

Two persons, carrying on the trade of brick-makers and lime burners in partnership, jointly purchased a large piece of building land, to be sold again in smaller lots, but the whole of the purchase money was advanced by one of them, who was entitled to two-thirds of the business, and the conveyance was taken in his name alone. Subsequently to the purchase, the other partner made his will, and after bequeathing certain specific parts of his personal estate, gave all the third part or share of personal property which he was entitled to, belonging to the brickkilns and the business thereof in copartnership, and all the residue of his personal estate to three trustees, whom he also appointed executors, in trust to convert the same into money; and he devised his third part or share of real estate in the brickkilns, which he was entitled to and held in his copartnership, and all the residue of his lands, tenements, hereditaments, and real estate, to the same trustees in trust to sell, and directed that the receipts and receipt of his said trustees, and the survivors or survivor of them, and his heirs, should be sufficient discharges to the purchasers. In order to facilitate the sales of the property, the trustees after his death released to the surviving partner their equitable interest, and empowered him alone to convey to the purchasers and give receipts for the purchase money; he continuing liable to account to his partners, the trustees, for their share of it on each sale. Would his receipt alone under these circumstances be sufficient, and could the trustees thus delegate to another the trust committed to them by their testator?

X. Y. Z.

RE-ADMISSION OF ATTORNEYS.

Last day of Trinity Term, 1841.

QUEEN'S BENCH.

Carr, John, Brighton.
Fryzer, Samuel, Tewkesbury.
Faithfull, William Dilsdale, Southampton.
Galsworthy, Robert, 18, Castle St., Holborn.
Gude, George, Northampton.
Lomax, James, Bristol and Stapleton.
Margetson, John, Kirkby Stephen, Appleby, and Kendal.
Mayer, John Parker, Newcastle-under-Lyne.
Munns, William, 5, Holland Place, Clapham Road.
Spode, Samuel, Ashton, nigh Birmingham, and Hednesford, and Manchester.
Turner, Joseph, Sheffield.
Williams, James, Merthyr Tidal, and Carmarthen.
Winter, Thomas, Jun., 25, Bedford Place, Kensington.

SUPERIOR COURTS.

Vice Chancellor's Court.

PRACTICE.—INJUNCTION.—EVIDENCE.

The Court will not dissolve an injunction obtained to stay proceedings in an action for the recovery of an alleged debt, unless the defendant in equity clearly, and without qualification, answers the case stated in the bill.

On a motion to dissolve an injunction, the plaintiff is not at liberty to give in evidence any parts of an account book produced under notice, unless his bill contains some charge relating to the parts proposed to be read by him.

This was a motion to dissolve an injunction which had been obtained by the plaintiff to restrain the defendants from proceeding in an action at law, brought for the recovery of a bill of exchange for 1000*l.*, accepted by the plaintiff, on the ground that his acceptance had been obtained under circumstances of fraud and improper conduct. The case stated by the bill was, that in the year 1833, the plaintiff, immediately after his marriage, was induced, on the representation of Ashcroft, who had for some time before acted as his agent, to sign two blank acceptances, which Ashcroft was to have got discounted, and to have handed over the produce to the plaintiff; but that, instead of doing so, Ashcroft had connived with the other defendants, and had appropriated the whole, or the greater part of what he had received on account of the bills, to his own use. In answer to this the defendants Parker and Baker (the former of whom was a retired tradesman, and the latter a solicitor), said that in the beginning of the year 1833, Parker being desirous of investing 2000*l.* on mortgage, applied to Baker, who promised to procure him a mortgage security for the amount, and he accordingly handed over 2000*l.* to Baker. Baker also stated that he was induced, on the representations of Ashcroft, to advance him 2000*l.* on account of the plaintiff, under a promise that the plaintiff should execute a mortgage for the amount upon certain copyhold property to which he was entitled in right of his wife; but that Ashcroft had neglected to procure the mortgage, and instead thereof had given him two bills for 1000*l.* each, accepted by the plaintiff, for one of which the action was brought, the other having been mislaid.

Jacob and Wright for the defendants Parker and Baker, in support of the motion, said the only question was, whether the plaintiff could avail himself of the answer attempted to be given by him to the action, by repudiating the agency of Ashcroft. There was no dispute as to the money being advanced by Parker to Baker, and subsequently by Baker to Ashcroft; but then it was said that Ashcroft had not properly fulfilled his trust by handing over the amount paid to him to the plaintiff. This, however, was a question between the plaintiff and Ashcroft, and as the plaintiff did not deny

the signatures to the bills to be his, and no case of fraud could be made out, the Court would be committing an injustice by continuing the injunction, and thus depriving the defendants of their only remedy by recovering a *bond fide* advance.

K. Bruce and Wood, *contrà*, insisted that the circumstances disclosed by the defendants' answer, and by the account books of Baker, fully established a case of fraud and collusion against all the defendants. It was evident that other transactions had taken place between Baker and Ashcroft, and the advances made to Ashcroft were on his own private account, although it was now attempted to make the plaintiff liable for them.

The Vice Chancellor said, that if Baker had sworn positively that the plaintiff knew the transactions to be such as he (Baker) represented, there would have been a case for dissolving the injunction, but he did not even swear as to his belief that the money alleged to have been advanced on account of the bills, did come to the hands of the plaintiff; he merely stated his belief that some part or parts thereof was or were paid to the plaintiff. His Honor, therefore, thought that something further was to be inquired into, and looking to what was stated in the answer, he did not think a clear case was made out by the answer, and under these circumstances the injunction must be continued.

[An objection having been made in the course of the argument to the defendant's reading as evidence various items in one of the account books of the defendant Baker, which were called for under a notice to produce, on the ground that they were not particularly referred to in the plaintiff's bill, the Vice Chancellor said the plaintiff was bound to charge in his bill the particular parts of the books intended to be made use of.]

Bartholomew v. Baker and others, April 17th, 1841.

Queen's Bench.

[Before the Four Judges.]

GUARDIAN IN SOCAGE.—PRACTICE.*

After a verdict for a defendant in an ejectment, and while a rule for a new trial was pending in the new trial paper, the lessor of the plaintiff died. A judge at chambers would neither order the case to be struck out of the paper on this ground, nor order the representatives of the lessor of the plaintiff to give security for costs; nor would the Court allow this as a preliminary objection to the rule for the new trial being argued.

A. claimed property as heir of his father, who died seized in 1816, A. being then twelve years old. Ejectment was brought by A. in 1837. From 1816 to the time of the ejectment, the step-mother of A. was in

* For the statement of the facts of this case, see ante Vol. 19, p. 61.

possession of the property, asserting it to be her own: Held, that A. was not entitled on the trial of the ejectment to treat his step-mother as his guardian in socage, from the death of his father till he attained the age of fourteen, so as to get rid of the effect of the Statute of Limitations.

Mr. Serjt. *Ludlow* appeared to shew cause against the rule which had been obtained in this case for a new trial. He first called the attention of the Court to the fact that since the rule had been obtained, the lessor of the plaintiff had died. Perhaps the death of the plaintiff might not in an action of ejectment have the effect of abating the suit; but the defendant ought at least to receive security for costs. In *Hilary Term* a summons was taken out, calling on the plaintiff to shew cause why this case should not be struck out of the new trial paper, or why security for costs should not be given, on the ground that the lessor of the plaintiff was dead; but Mr. Justice *Williams*, after referring to the case of *Thrustout v. Turner v. Grey*, 2 Str. 1056, refused to make any order.

Lord *Denman*, C. J.—Are you instructed Mr. *Carrington*?

Mr. *Carrington*.—I am.

Lord *Denman*, C. J.—Then it appears that there is some one having an interest in the land, and we must hear the argument.

Mr. Serjt. *Ludlow* shewed cause.—There is a preliminary objection here. The widow here is sought to be treated as guardian in socage of the person who claims as the heir. She cannot be treated in that character. She was not the mother of the lessor of the plaintiff, but merely his step-mother, having married the father of the lessor of the plaintiff. Now a mother-in-law cannot be guardian in socage, for a guardian in socage is a person next in blood to the heir, and to whom the estate cannot descend. The mother-in-law does not come within this description. Then, again, the mere possession of land does not constitute the possessor a guardian in socage to the heir. But in the present case the objection is still stronger, for she refers her possession to a will. Her right, therefore, whatever it is, is a right adverse to that of the person claiming as heir. She cannot on mere presumption, or at the caprice of the heir, be treated as guardian in socage. It is admitted that in certain circumstances the heir has a right to treat the person in possession as a guardian in socage; but that is only for the purpose of calling that person to account for the rents he has received, but not for the purpose of keeping alive the claim of the heir. There is another objection arising on the provisions of the 3 & 4 W. 4, c. 27, the 16th section of which provides that whenever a person is under any disability at the time of his right accruing, he may sue within ten years after his disability has ceased. The dates here shew that the plaintiff is barred. The father of the plaintiff died on the 25th of March, 1816, when the plaintiff was twelve years old. The rights of the plaintiff, therefore, began at that time, but he was under disability which, by law, protected him for some

years. But he became of age in 1825, and ought to have sued out his writ at least within ten years afterwards; yet his writ was not sued out till 1837, or two years after the ten years subsequent to the time of his coming of age. The main point, however, is, that the heir cannot make a person his guardian in socage for any other purpose than that of accounting to him for the rents received while such person was in possession. Here it is quite clear that the widow was in possession in a different right, and the plaintiff cannot at his mere pleasure treat her as guardian in socage, and maintain ejectment against her.

The Court called on Mr. *Carrington* to answer the objection as to the limitation of time.

Mr. *Carrington*.—The 10th section of the Statute of Limitations was made in case of a party under disability. To give it the construction now contended for, would be to attribute to it a totally different purpose. The act declares that a party shall have ten years within which to bring his action after his disability has ceased. But if on the construction now contended for, he can have that only, and not have twenty years, as a man not labouring under any disability is undoubtedly entitled to, a person who was under disability for a year would be barred after eleven years, while one under no disability would not be barred till twenty years had elapsed. As to the right to treat the widow as guardian in socage, the authorities before referred to^b shew that under the age of twelve years the infant heir may treat any person then entering into possession of his lands as guardian in socage. And in none of the cases does the distinction now contended for, that it is only for the purpose of an account, at all appear. The right is absolute. It is said that the defendant cannot be treated as guardian in socage, because she set up a claim of another right. In the year-book 22 Edw. 4, pl. 16, the defendants pleaded to an action of account, in which it was sought to charge them as guardians in socage, that the lands were held in chivalry of the Earl of Kent; but it was held that the plea, if true, was no answer to the action, unless it went on to aver that the defendants took the profits of the land by the command of the earl. If a person can be treated as guardian in socage, and the infant elects so to treat him, he is guardian for all purposes, and is entitled to allowances. This appears from the case of *Ireland v. Coulter*.^c [Mr. Justice *Coleridge*.—You say that you are entitled to call on the guardian in socage in an action of account: but can that be so at this distance of time?] Yes, in consequence of her bearing that character, except so far as the right may be affected by the Statute of Limitations. [Lord *Denman*, C. J.—But is the mere fact of your treating her as a trespasser sufficient to make her liable as guardian in socage.] All the authorities shew that a person whom the heir

^b See the authorities cited *ante*, Vol. 19, p. 61.

^c Cro Eliz. 630.

elects to treat as guardian is entitled to allowances; but the case of *Martin v. Porter*,^d shews that a tort-feasor cannot claim allowances. [Mr. Justice Coleridge.—But that case is now under review.]

Lord Denman, C. J.—We do not think that you are entitled to treat the widow in this case as guardian. It is said that the lessor of the plaintiff might elect to treat the defendant either as a trespasser or as a guardian. He has never done any act by which he ever treated her as guardian; indeed, the only act he has done is to bring an action of trespass and ejectment against her.

Mr. Justice Patteson.—I do not think that we can say that she was in possession as guardian in socage, unless we are prepared to say that any man who enters into the possession of lands, the heir to which is an infant, is of necessity in the situation of a guardian in socage. The widow here is as much a stranger as any person in any part of the world.

Rule discharged.—*Doe d. Coxons v. Coxons*, E. T. 1841. Q. B. F. J.

Queen's Bench Practice Court.

JUDGMENT AS IN CASE OF A NONSUIT.—DEFENDANT'S INSOLVENCY.—PEREMPTORY UNDERTAKING.

If a defendant obtain a rule nisi for judgment as in case of a nonsuit, and on shewing cause against it, the excuse urged is the insolvency of the defendant, it is not sufficient to shew that the defendant has become insolvent since the commencement of the action, but it must appear that the plaintiff's knowledge on that point has reached him since the last step taken by him for the purpose of trying the cause.

In this case an action was brought, and issue having been joined, and the plaintiff not having proceeded to trial according to the course and practice of this Court, a rule nisi for judgment as in case of a nonsuit was obtained. On serving it, the attorney for the plaintiff said that he should proceed to trial at the ensuing assizes, but that if he did not, the defendant should be at liberty to move for judgment as in case of a nonsuit, absolute in the same manner as if he had shewn cause against the rule, and it had been discharged on a peremptory undertaking. The plaintiff, however, did not proceed to trial at the ensuing assizes; a rule nisi for judgment as in case of a nonsuit was obtained against this rule.

Alexander shewed cause, and produced an affidavit wherein it was sworn that the defendant had become insolvent, and that the plaintiff had only become acquainted with the fact of the insolvency since the commencement of the action.

Gray, in support of the rule, contended that the affidavit produced by the plaintiff was insufficient, as it did not state the time with sufficient exactness at which the information

of the defendant's insolvency reached the plaintiff. It was quite consistent with what was there sworn, that the knowledge of the insolvency had reached the plaintiff before the joinder of issue. If it had, then it was his duty not to proceed to the joinder of issue. It was, moreover, consistent with this affidavit, that the knowledge of the insolvency had reached him previous to that act, which was in reality equivalent to a peremptory undertaking. The plaintiff had no right thus to harass a defendant whom he knew to be insolvent, and then, when his caprice led him to decline proceeding with the cause, set up that insolvency as an excuse.

Coleridge, J., agreed with the argument just urged. The plaintiff was bound, when he had brought the cause to issue, to proceed to trial. If he wished to relieve himself from the necessity thus imposed, on the ground that the defendant had become insolvent, it was his duty to shew that the insolvency did not become known previous to the last step taken by him for the purpose of trying the cause. That was not done in the present case, for it was quite consistent, and indeed probable, from the manner in which the affidavit was sworn, that the knowledge of the insolvency reached him previous to giving the verbal peremptory undertaking. It not having been shewn by the plaintiff that the knowledge of the defendant's insolvency did not reach him previous to the last step taken by the plaintiff in furtherance of trying the cause, the present rule must be made absolute unless the plaintiff gave a peremptory undertaking.

Rule discharged on a peremptory undertaking.—*Fisher v. Lediard*, E. T. 1841. Q. B. P. C.

AMENDMENT.—NISI PRIUS RECORD.—NAMES OF PARTIES.—WRIT.—DECLARATION.

The Court will, under special circumstances, allow the name of one of two defendants to be struck out of the declaration, although issue has been joined, and the nisi prius record made up, the record entered, and afterwards withdrawn, on account of the plaintiff being aware that the defendant in question had been improperly made a party to the suit.

This was an action on a charter-party. Two persons were made defendants. The cause proceeded to issue: notice of trial was given, and the cause entered with the marshal. The Judge presiding on the civil side, at the last Dorset assizes, for which the notice of action had been given, Mr. Justice Erskine. When the cause had there been set down for trial, it was discovered that although the charter-party had been entered into on the 22d Sept. last, one of the defendants did not become registered owner until the 29th of that month. The plaintiff perceiving that a nonsuit must be the necessary consequence, if he proceeded to try the cause in the present state of the record, applied to Mr. Justice Erskine to amend the

issue by striking out the name of the defendant who had last become a registered owner. The learned Judge declined to accede to this application, and the record was accordingly withdrawn.

Barstow applied for and obtained a rule to shew cause why, upon payment of costs, the plaintiff should not be at liberty to amend his proceedings by striking out the name of the defendant whose name had been improperly introduced into the writ, and subsequent proceedings.

Erle appeared to shew cause against this rule, and contended that the Court had no power to amend the proceedings in the manner suggested, as the effect of such an amendment was in fact to enable the plaintiff to bring a new action. It was his own fault for bringing the action against a person who he had perfect means of knowing was not legally liable to the action. The Court had, for many years past, declined making any such amendments as this, unless it appeared that unless such an amendment was made, the plaintiff's claim would be barred by the Statute of Limitations. No such consequence was suggested in the present case, and therefore the result was, that the amendment could not be made.

Barstow supported the rule, and submitted that the amendment sufficiently extensive might be made without amending the writ, as amending the issue would be sufficient. The writ might be against several, and the declaration against one. If, therefore, the plaintiff's proceedings were treated as having been taken against one, although the writ was against several, and an amendment made in conformity with that suggestion, nothing need be altered in the writ, as there would then be no substantial variance between the writ and the subsequent proceedings in the cause. That would take the case out of the general rule which the Judge had laid down, not to allow any amendments in the parties to a cause unless there was danger of the Statute of Limitations running against the plaintiff's claim.

Coleridge, J., said, he thought the amendment might be made in the manner proposed without interfering with the writ, and therefore made the rule absolute for the amendment on payment of all the costs of both defendants down to the present time, of this application, and the defendant whose name remained on the record having leave to plead *de novo*.

Rule absolute accordingly.—*Pulmer v. Beale*, E. T. 1841. Q. B. P. C.

DATE OF WRIT.—ISSUE.—LACHES.—ATTORNEY.—DEFENCE IN PERSON.

If a party, not an attorney, conduct his defence in person, he is liable to the same rules of practice as if the defence was under the conduct of an attorney; therefore, where an issue was delivered on the 13th March, misdescribing the date of the writ of summons by which the action was commenced, the delay to avail himself of the objection from

that day till the 16th April was held such laches as cured the irregularity.

In this case, an action was commenced against the defendant, who was not an attorney, but who defended in person, and the issue was ultimately delivered. In that issue the date of the writ of summons was described as of the 23d December, 1840, although it had been in fact served on the 8th January, 1841. The delivery of the issue took place on the 13th March, and notice of trial was served on the 16th April. An attorney was then employed, and on examining the issue, it was perceived that the error in question had been committed in the description of the writ of summons. The death of the attorney and consequent disarrangement, prevented the defendant making an application to the court on account of the objection complained of until the 1st May. The objection was clearly a fatal one, and the proceedings ought consequently to be set aside.

Coleridge, J. said, that if parties thought proper to conduct their proceedings in person, without the assistance of an attorney, they must be bound by the same rules as if they had pursued the ordinary course. The delay since the 16th April was satisfactorily accounted for, but that was not the case with respect to the delay which took place from the 13th March till the 16th April. The defendant in the ordinary course was bound to be aware of any objections which existed to the proceedings of his opponent in conducting the suit, and the fact of the defendant proceeding in person did not free him from that obligation. The rule prayed for must therefore be refused.

Rule refused.—*Currey v. Bowker*, E. T. 1841. Q. B. P. C.

ARTICLED CLERK.—DISCHARGING ARTICLES.—ABSCONDING OF MASTER.

If the business of an attorney, who has an articulated clerk, declines, and he afterwards abscond, the Court will discharge the clerk from his articles.

V. Williams applied for a rule to shew cause why the articles of an articulated clerk should not be discharged. The affidavit on which the application was founded stated the person to whom the applicant was articulated had so far lost his business as to render it impossible for the clerk to obtain that instruction and improvement which it was the object and intention of the articles that he should acquire. Ultimately the master had absconded from the country, no one knew where. Under these circumstances, it was proposed that the clerk should be discharged from his articles, in order that he might be articulated to another master.

Coleridge, J., granted the rule.

The rule was afterwards made absolute.

Rule absolute.—*Ex parte Thomas*, E. T. 1841. Q. B. P. C.

CAUSE LISTS.—*Trinity Term, 1841.***Queen's Bench.**

NEW TRIALS.

Remaining undetermined at the end of Easter Term, 1841.

Michaelmas Term, 1839.

Devon—Neck, exor v. Smart—*Manning*
Hants—Doe dem. of Fleming, Esq. v. Shook and anr.—*Erle*
Northumberland—Brunton and others. v. Hall—*Alexander*
" Nixon v. Nanney, Esq.—*Wightman*

Lancaster—Smith v. Burdekin—*Alexander*
" Richardson v. Dunn—*Cresswell*
" Fielden v. Sedden & ors., extrix. & exors. *Same*
" The Master, Wardens, and Society of the Art and Mystery of Apothecaries of the City of London v. Greenough—*Same*
" Green and ors. v. Smithies—*Dundas*

Hilary Term, 1840.

Middlesex—Mason v. Paynter, Esq.—*Kelly*
" Baker v. Woollams and anor.—*Same*
" Blagg v. Aston—*Alexander*
" Scott v. Parker—*Erle*
" Connelly v. Holt—*Jervis*
" Curlewis v. Corfield—*Barstow*
London—The Queen of Portugal v. Rothchild & ors.—*Sir F. Pollock*
" Nivon and anor. v. Devaux and ors.—*Sir W. W. Follett*
" Wheeler v. Montifore and ors.—*Platt*
" Thompson v. Stuart—*Addison*
" Ward v. Law, Public Officer—*Wightman*

Easter Term, 1840.

Middlesex—Claridge v. Latrade—*Attorney General*
" Same v. Same—*Sir F. Pollock*
" Roxburgh v. Devon, Esq.—*Kelly*
" Impett v. Phillips—*Jervis*
" Snagg v. Groome, sued with Laud—*Crowder*
" Bell v. Mantle—*Platt*
" Carpenter v. Wall a priaur.—*Humphrey*
" Lane and ors. v. Burghart—*Cowling*
" Keily v. Curlewis—*W. H. Watson*
" Bingham v. Stanley—*E. V. Williams*
" Foxcroft v. West—*Addison*
London—Elwand v. Melville—*Attorney General*
" Elwand v. Melville—*Wightman*
" Collard and anor. v. Allison and anor.—*Sir W. W. Follett*
" Hackwood, who has survived, &c. v. Some—*R. V. Richards*
" Benson v. Blunt—*W. H. Watson*
Leicester—Hopley v. Crockett, clk.—*Adams, Serjt.*
Warwick—Doe d. Earl of Abergavenny v. Hawkes—*Same*
Northampton—Davies v. Thompson—*Miller*
Sussex—Candle v. Seymour, Esq.—*Platt*
Surrey—Cantwell v. Saunders—*Same*
" Darby v. Harris and ors.—*Platt*
" Hornby v. Coulton—*C. C. Jones*
Gloucester—Slatter v. Oakley—*Ludlow, Serjt.*
" Davies v. Black, clk.—*Talfourd, Serjt.*
Berks—Doe d. Ewer v. Willis—*Ludlow, Serjt.*
" Eblett v. Haalam—*Lee*
Stafford—Doe d. Elwell, assignee v. Hordern and anor.—*Talfourd, Serjt.*

Worcester—Aston v. Gandon—*Whately*
Chester—Filton v. Hammeraley—*Jervis*
Denbigh—Jones v. Overton—*Cresswell*
Radnor—Lewis v. Meredith and ors.—*J. Evans*
York—The Manchester and Leeds Railway Company v. Fawcett—*Alexander*
Norfolk—Browne v. Clarke, sued, &c.—*Sir F. Pollock*

" Sheppard v. Day and Everett—*Kelly*
Bucks—Champion v. Griffiths—*Same*
" Same v. Same—*Andrews*
" Clayton, Bart. v. Corby—*Same*
Devon—The Honble. N. Fellows v. Clay—*Sir W. W. Follett*
" Doe dem. of Williams, Bart. v. Nancekivill—*Crowder*
" Green v. Eales—*Bere*
" Doe d. Earl of Egremont v. Hellings—*2 causes, Bere*
" Ramsey, the younger, & an. v. Beaver—*M. Smith*

Somerset—Andrews & anor., admors., &c. v. Goodfellow & anor.—*Bompas, Serjt.*
" Pharasin v. Johnson—*Same*
" Paddfield v. Tapp—*Erle*
" Doe d. Avery v. Avery—*Kinglelake*
" Doe d. Earl of Egremont v. Date & anor.—*Bere*
" Same v. Williams & anor.—*Same*
" Same v. Stockham—*Same*
" Doe d. Earl of Egremont v. Bellamy—*2 causes, Bere*
" Same v. Pulman & others—*Same*
" Same v. Warden & anor.—*Same*
" Same v. Gould & others—*Same*
Hants—The Queen v. Ashley—*Erle*

Trinity Term, 1840.

Middlesex—Doe v. Harlow & others—*E. V. Williams* for defendant Warren
" Doe d. Warwick v. Coombes & another—*Kelly*
" Curlewis v. Cox—*Lee*
London—The Queen v. Jacob Ahrenfield & three others—*Sir F. Pollock*
" Pipe & anor. v. Steele & Harvey—*Kelly*
Michaelmas Term, 1840.
Middlesex—Ingram v. Bingham—*Kelly* (*In replevin*)
" Kilpack v. Major—*Platt*
" Dundas, clerk v. Hoey, Esq.—*Erle*
" Barling v. Paterson—*Byles*
London—Keane, Bart. v. Hutchinson & others, representatives, &c.—*Att. General*
" Techlenborg v. Treffrey & anor.—*Same*
Cardigan—Doe d. Hughes & ors. v. Evans—*J. Evans*
Chester—Washington v. Hartham—*Weloby*
" Downs v. Cooper—*Cottingham* (*In replevin*)

Anglesey—Williams v. Jones & anor.—*Weloby*
Derby—The Queen v. Inhabitants of Heage—*Adams, Serjt.*
Warwick—Bosanquet & ors. v. Boulton and Cooknell—*Goulburn, Serjt.*
Suffolk—Brooke v. Jenny & anor.—*Kelly*
" Jones, a pauper v. Gurdon—*Same*
Monmouth—Stonehouse & another v. Geat—*R. V. Richards*
Oxford—Smith v. Clinch—*W. J. Alexander*
" Grace v. Clinch—*Same*
Wilts—Thompson & ors. v. Phillips—*Bompas, Serjt.*
" Allum v. Fryer—*Erle*
" Same v. Same—*Crowder*
Devon—Luscombe v. Prettyjohn—*Erle*
Somerset—Doe d. Graham & anor. v. Hawkins—*Bompas, Serjt.*

Somerset—Wake v. Thring & ors.—*Erie*
 Bristol—Taylor v. Greenwood—*Same*
 Sussex—Doe d. Wyndham & anor. v. Carew—*Channell, Serjt.*
 „ Wilkinson v. Martin—*Platt*
 Essex—Baynes v. Brewster—*Same*
 „ King v. Greenhill—*Theisger*
 „ Bovan & anor. v. Guardians of the Poor of
 Tonbridge Union, county of Kent—*Platt*
 Surrey—Hawker v. Marshall—*Platt*
 York—Johnson and another assignees v. Con-
 stable Bart. and another—*Alexander*
 „ Fawcett and another v. Calvert—*Wortley*
 Durham—Johnson v. Blenkinsopp, Esq.—*Same*
 „ The Great North of England Railway
 Company v. Webb—*Cowling*
 „ Dixon v. Ormsby and others—*Cronwell*
 Northumberland—Chapman v. Beckington—*Same*
 Lancaster—Heane, clk. v. Stowell, clk.—*Same*
 „ Doe dem. of Myott v. The St. Helens
 and Runcorn Gap Railway Company
 —*Same*

Hilary Term, 1841.

Middlesex—Waters v. Earl of Thanet—*Att. Gen.*
 „ Contant and others v. Chapman Esq.—*Same*
 „ Peters v. Elderton and others—*Sir*
F. Pollock
 „ Beetham v. Cooke and ors.—*Sir W.*
Follett
 „ Hellewell v. Dearman and anor.—*Kelly*
 „ Flather v. Stubbs and anor.—*Platt*
 „ De Villa v. Val Marino—*Same*
 London—Fuller v. Wilson—*Theisger*
 „ Brooks & an. v. Macleod—*Sir F. Pollock*
 „ Jackson and anor. v. Thompson—*Same*
 „ Gibson and another, assignees v. Surrey
 Canal Company—*Same*
 „ Milward v. Hibbert—*Sir W. F. Follett*
 „ Moffatt and another v. Sidney—*Kelly*
 „ The South Eastern Railway Company v.
 Rowe the younger—*Peacock*

Easter Term, 1841.

Middlesex—Ewing v. Osbaldeston—*Attorney Gen.*
 „ Egan v. The Guardians of the Poor
 of the Kensington Union, county of
 Middlesex—*Sir F. Pollock*
 „ Nicholson and another v. Rall—*Same*
 „ Petherick v. English and ors.—*Theisger*
 for defendant Waskett
 „ English v. Fairburn—*Platt*
 „ Ashmole v. Wainwright & an.—*Byles*
 „ Vassiere v. Cowran and anor.—*Martin*
 London—Albon, trustee &c. v. Hayman—*Platt*
 „ Sidney v. Belcher and another—*Wheatley*
 Surrey—Robinson v. Turner—*Sir F. Pollock*
 „ Mason v. King, Esq.—*Theisger*
 Hertford—Doe d. Crawley, Esq. v. Williamson
 and others—*Same*
 „ Osborn v. Kilpin—*Platt*
 Kent—Allhisen and another v. Strange—*Same*
 Warwick—Cooper v. Bluck and others—*Humfrey*
 Glamorgan—Doe dem of Duke of Beaufort v.
 Gough—*Solicitor General*
 „ E. Thomas v. B. Thomas—*E. F. Wil-*
liams
 Chester—The Mayor, Aldermen and Burgesses of
 the borough of Macclesfield, in the
 county of Chester v. Walker—*Jervis*
 „ Doe dem of the Mayor, Aldermen and
 Burgesses of the city of Chester v.
 Francis—*Same*
 Carnarvon—Roberts v. Jones—*Same*

Denbigh—Williams, clk. v. Hughes—*Townsend*
 Monmouth—Morgan, Bart. v. Powell—*Att. Gen.*
 „ Grover v. Price—*Talfourd, Serjt.*
 Hereford—Brydges, Bart. v. Lewis—*Bailey*
 Worcester—Doe d. Evans v. Page—*Gordon*
 Stafford—Blagg v. Appleby—*Wiles*
 Cornwall—Roscorla v. Thomas—*Bompas, Serjt.*
 „ Collins v. Horrell, the younger—*Erie*
 „ Wallis v. Freane and another—*Same*
 „ Edmonds v. Same—*Cressoder*
 Wilts—Ogilvie v. Dallimore—*Bompas, Serjt.*
 Devon—Atkinson v. Rallegth and others—*Bompas,*
Serjt.
 „ The Queen v. J. Ames and anr—*Erie*
 „ Pinsent v. Knox—*Cressoder*
 Somerset—Doe d. Parsley v. Day and others—*Kelly*
 „ Laver v. Hawkins—*Erie*
 „ Doe d. Goodlands v. Franklin—*Same*
 Hants—Mant v. Collins and another—*Cressoder*
 Cambridge—Barley v. Sandlo and ors.—*Andrews*
 Bedford—Doe d. Crawley, Esq. v. Williamson and
 others—*Same*
 Suffolk—Doe d. Pye v. Bramwhite—*Same*
 „ Denny v. Clark—*Same*
 Norwich—Stannard v. Bush—*Gunning*
 York—Doe d. Metcalf, of Ivelett, v. Metcalfe of
 Thwaite—*Cresswell*
 „ King v. Procter—*Same*
 Lancaster—Munn & ors v. Negreponte—*Alexander*
 „ Anderton v. Chaffer—*Same*
 „ Catterall v. Kenyon and wife—*Same*
 „ The Queen v. Scott & anr—*Cresswell*
 Durham—Hedley v. Bainbridge—*Alexander*

SPECIAL PAPER.

Easter Term, 1841.

E. Chester—Archbishop of York and others v.
 Trafford—*special case*
White—Paul v. James—*special case*
White, & W.—Doe d. Rayer and others v. Strick-
 land—*special case*
Mason & D.—Francis and others v. Bull and anr
special case
Roy & Co.—Milward and others v. Hobbart and
 another—*dem A.*
Meggison & Co.—Newton, Esq. v. Constable, Bt,
 and others—*dem A.*
Sweet & Co.—Baker v. Greenhill and others—*spe-*
cial case
Williams—Williams, Gent. v. Jones, Gent.—*dem A.*
Burfoot—Owen v. Adams—*dem A.*
Whitaker—Hinton v. Dibdin and ors—*dem A.*
Hewitt & T.—Furze v. Sherwood—*special verdict*
Fisher—Bennett and others v. Flight—*dem A.*
Faithfull—Colman v. Groom—*dem A.*
Howard—Howard v. Gossett and others—*dem A.*
Coe—Fransham and anr v. Peile—*dem A.*
Bayley & J.—The Cheltenham and Great Western
 Union Railway Compy v. Daniel
 —*special case*
Adlington & Co.—Smith v. Faulkner and another,
 in replevin—*dem A.*
Bayley & J.—The Cheltenham and Great Western
 Railway Company v. De Medina
 —*special case*
Bailey & Co.—Morris, assess of sheriff of Middle-
 sex v. Matthews and another—*dem A.*
R. & W. Oldershaw—Baker v. Adams—*dem A.*
Tomkins—King v. Share—*special case*
Cornthwaite—Johnson v. Faulkner; in repln—*dem*
Dunborough & J.—Bull and ors v. Inwood—*dem A.*

Samt—Cooch and another v. Goodman—dem A.
Jennings & Co.—Richards v. Dyke and another—
dem A.

W. & E. Dyke—Chapman v. Beecham, in repln—
dem A.

Wing & T.—Garton another v. Robinson—dem A.
Hook—Murray v. Williams—dem A.

Clarke & M.—Jones v. Downman—special case

Lewis—Levy v. Midland—dem A.

Mounsey & G.—Stanley and another v. Beattie—
dem A.

Meredith & R.—Spry v. Bromfield—special case

Wyche—Spilsbury and another v. Clough and anr
—dem A.

White & W.—Vaughan & another, admix v. Mur-
gan, admix—dem A.

Edwards—Pegg v. Miller—dem A.

Sydney—Blumenthal, trading & Co. v. Castellani and
another—dem A.

Clase—Smith v. Cluich—dem A.

Todd—Taylor v. Relf and others—dem A.

Todd—Taylor v. Moore—dem A.

Smithson & M.—Cooke v. Riddall—dem A.

Gude, jr.—Cutler v. Padwick—dem A.

CROWN PAPER.

Trinity Term, 1841.

Devonshire—The Queen v. Elizabeth Shiles and
another

Yorkshire—The Queen v. Wm. West, Hull and
Selby Railway Company

Lancashire—The Queen v. Manchester and Leeds
Railway Company

Gloucestershire—The Queen v. Gloucester and
Birmingham Ditto

Carnarvon—The Queen v. Christopher Alderson
Yorkshire—The Queen v. York and North Midland
Railway Company

Berkshire—The Queen v. Henry Deane and ora.
justices, &c.

Lancashire—The Queen v. Isaac Higginbottom

Middlesex—The Queen v. London and Birming-
ham Railway Company

„ *Same v. Same*

„ *The Queen v. Eastern Counties Rail-*
way Company, Ex parte Price and
others

„ *The Queen v. Same, on prosecution*
of Colliengridge

Shropshire—The Queen v. Justice of Salop

Leicestershire—The Queen v. Leicestershire and
Northamptonshire Union Canal
Company

Yorkshire—The Queen v. Inhabitants of Clink

Somersetshire—The Queen v. Inhabitants of Lyd-
card St. Lawrence

„ *The Queen v. William York*

Lindsey—The Queen v. Inhabitants of East Vile
Lancashire—The Queen v. Guardians of Wigan
Union.

Ipswich—The Queen v. Mayor of Ipswich

Derbyshire—The Queen v. Midland Counties Rail-
way Company

„ *The Queen v. Same*

Essex—The Queen v. John Pierce Cruden and
others

Wilts—The Queen v. J. Spackman and three ora.

London—The Queen v. Inhabitants of St. Michael,
Crooked Lane.

Exchange of Pleas.

Sittings in Trinity Term, 1841.

		<i>Banc.</i>	<i>Equity.</i>	<i>Nisi Prius.</i>
Saturday	May 22	-	Lord Abinger	_____
Monday	24	Peremptory Paper	Lord Abinger	_____
Tuesday	25	_____	_____	_____
Wednesday	26	-	-	Middlesex, 1st Sitting
Thursday	27	Circuits chosen	-	Do. } by Adjournment
Friday	28	-	-	Do. }
Saturday	29	-	Lord Abinger	_____
Monday	31	Special Paper	-	_____
Tuesday	June 1	Errors	-	London, 1st Sitting
Wednesday	2	Special Paper	-	_____
Thursday	3	-	Lord Abinger	_____
Friday	4	-	-	Middlesex, 2d Sitting
Saturday	5	-	-	Do. } by Adjournment
Monday	7	Special Paper	-	Do. }
Tuesday	8	-	-	London, 2d Sitting
Wednesday	9	-	-	Do. by Adjournment
Thursday	10	-	Lord Abinger	_____
Friday	11	-	Lord Abinger	_____
Saturday	12	-	-	_____

PEREMPTORY PAPER.

Rules enlarged to Monday the 24th day of May, 1841.

To be taken at the Sitting of the Court.

<i>Date Rule Nisi.</i>	<i>Plaintiff.</i>	<i>Defendant.</i>	<i>Counsel.</i>
3rd May, 1841 -	In the Matter of The Rev. Benjamin Barker, Clerk	- Sir F. Pollock	
28th April, 1841 -	Doe	- William Owen	- Mr. Atherton
	(and 12 other actions at the suit of the said plaintiff)		
27th April, 1841 -	Martell	- Haynes }	- Mr. Platt
	Harmon	- Haynes }	
21st April, 1841 -	Le Pere	- Skinner	- Mr. C. C. Jones
17th April, 1841 -	Haworth	- Fletcher the yr	- Mr. Dundas

<i>Date Rule Nisi.</i>	<i>Plaintiff.</i>	<i>Defendant.</i>	<i>Counsel.</i>
5th May, 1841	- Wood	- Kerrison	- Mr. Platt
6th May, 1841	- Colman	- Pring	- Mr. Kingslake
23rd April, 1841	- Dixon	- Motteram }	- Sir F. Pollock
24th April, 1841	- Dixon	- Motteram	- Mr. Bovill
16th April, 1841	- Addisnell	- Finch	- Mr. Erle
23rd April, 1841	- Rutter	- Chapman	- Mr. Cresswell
1st May, 1841	- Foster	- Pointer	- Mr. Serjt. Ludlow
8th May, 1841	- Hall & anor.	- Such	- Mr. Humphrey

Enlarged to Thursday 27th May, 1841.

19th April, 1841	- Smith	- Tynte (sued, &c.)	- Mr. Butt
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SPECIAL PAPER.

Remanets from Easter Term, 1841.

For Judgment.

Doe d. Todd v. Duesbery, (*heard 16 Nov. 1840*)—*special case*
 Jackson v. Hanson, (*heard 10 Feb. 1841*)—*demurrer*
 Webb, treasr. &c., v. James and ors., (*heard 3 May, 1841*)—*ditto*
 Wyld v. Pickford and another, *in case*, (*heard 13 May 1841*)—*ditto*
 Inglis and others v. Haigh, (*heard 13 May 1841*)—*ditto*

For Arguments.

Wilson, pub. offr. &c. v. Craven and others—*special case*
 Prior v. Hembrow and another—*ditto*
 Sumners v. Ball and another—*demurrer*
 Jordin v. Crump—*ditto*
 Fraser, pub. offr. &c. v. Welsh and ors.—*ditto*
 Wilson v. Lloyd and Robinson—*ditto*
 Bain, regd. offr. v. Cooper and anor.—*ditto*
 Schild, the elder, v. Kilpin—*ditto*
 Howard v. Crowther—*ditto*
 Bain, pub. offr., v. Cooper—*ditto*
 Newton v. Willmot, Bart.—*ditto*

NEW TRIAL PAPER.

For Judgment.

Moved Michaelmas Term, 1840.

Cornwall, *Mr. Justice Coleridge*—Oatley v. Bourne, heard 11th Feb., 1841.—*Mr. Erle.*
 Cornwall, ———— Hawken v. Bourne, heard 11th Feb., 1841.—*Mr. Erle.*

Moved after the fourth day of Hilary Term, 1841.

Middlesex, *Mr. Baron Rolfe*—Marston v. Allen, heard 23rd April, 1841.—*Mr. E. F. Williams.*

Moved Easter Term, 1841.

London, *Lord Abinger*—Vannellott v. Cresswell and others, heard 30th April, 1841.—*Mr. Cresswell.*
 London, *Lord Abinger*—Amos and others v. Temperley, heard 30th April.—*Mr. Peacock.*
 Derby, *Lord Abinger*—Smith v. Royston, heard 5th May, 1841.—*Mr. Balguy.*

For Argument.

Moved Michaelmas Term, 1840.

Winchester, *Mr. Justice Coleridge*—Pechell and others v. Watson and another, part heard 11th Feb., 1841.—*Mr. Serjeant Bompas.*

Moved Easter Term, 1841.

Warwick, *Lord Abinger*—Salmon, assignee, &c., v. Matthews—*Mr. Serjeant Adams.*
 Warwick, *Lord Abinger*—Salmon, assignee, &c., v. Matthews.—*Mr. M. D. Hill.*
 Hertford, *Lord Denman*—Shuttleworth, and others, assignees, &c. v. Wyatt.—*Mr. Serjt. Channell.*
 Chelmsford, *Mr. Baron Parke*—Welch v. Chapman.—*Mr. R. Gurney.*
 Maidstone, *Lord Denman*—East v. Jewell.—*Mr. Theagar.*
 Maidstone, *Lord Denman*—Chatwin v. Blight.—*Mr. Corne.*
 Lewes, *Mr. Baron Parke*—Beeching v. Westbrooke.—*Mr. Serjeant Shee.*
 Kingston, *Lord Denman*—Todd and another v. Emily and another.—*Mr. Theagar.*
 Kingston, *Lord Denman*—Elliot and others, executrix and executors v. Elliott and another.—*Mr. Serjeant Channell.*

Stafford, *Mr. Baron Gurney*—Hodgetts and another v. Parish.—*Mr. Serjeant Talfourd.*
 Gloucester, *Mr. Baron Gurney*—Bishop v. Alvis.—*Mr. Serjeant Talfourd.*
 Durham, *Mr. Baron Rolfe*—Gale the younger v. Williamson, bart.—*Mr. Knowles.*
 Durham, *Mr. Baron Rolfe*—Wallis v. Harrison and others.—*Mr. Knowles.*
 Durham, *Mr. Baron Rolfe*—Addison v. Williamson, bart. on affidavit.—*Mr. Oranger.*
 York, *Mr. Justice Maule*—Abbey v. Peich.—*Mr. Alexander.*
 York, *Mr. Justice Maule*—King and others, assignees, &c., v. Hodgson.—*Mr. Knowles.*
 Lancaster, *Mr. Baron Rolfe*—Tayler v. Hodgson and another.—*Mr. Ormswell.*
 Liverpool (Common Pleas at Lancaster), *Mr. Baron Rolfe*—Ellis (a pauper) v. Taylor and others.—*Mr. Cresswell.*

Liverpool, *Mr. Baron Rolfe*—Foulds v. Willoughby.—*Mr. Cresswell.*
 Liverpool, *Mr. Baron Rolfe*—Higgins and others v. Senior.—*Mr. Cresswell.*
 Liverpool (Common Pleas at Lancaster), *Mr. Baron Rolfe*—Muschamp v. The Lancaster and Preston Junction Railway Company.—*Mr. Cresswell.*
 Liverpool, *Mr. Baron Rolfe*—Davidson (public officer), &c. v. Mc Gregor.—*Mr. Dundas.*
 Liverpool, *Mr. Baron Rolfe*—Stewart v. Cauty.—*Mr. Crampton.*

Liverpool, *Mr. Baron Rolfe*—Brown and another v. Westhead and another.—*Mr. Crompton*.
 Cambridge, *Chief Justice Tindal*—Brimley and others v. Mumford.—*Mr. Kelly*.
 Cambridge, *Chief Justice Tindal*—Hatfields and another v. Pryme, esq. and another.—*Mr. S. Taylor*.
 Bala, *Mr. Justice Williams*—R. Jones v. T. Jones.—*Mr. Walsby*.
 Carnarvon, *Mr. Justice Williams*—Doe d. Ellis (a pauper) v. Owens.—*Mr. Townsend*.
 Ruthin, *Mr. Justice Williams*—Williams v. Morris and others.—*Mr. Townsend*.
 Ruthin, *Mr. Justice Williams*—Doe dem. Parry v. Foulkes.—*Mr. Townsend*.
 Chester, *Mr. Justice Williams*—Doe d. Roylance v. Lightfoot.—*Mr. J. Evans*.
 Carmarthen, *Mr. Justice Colman*—Doe d. Davies and others v. Evans.—*Mr. Chilton*.
 Brecon, *Mr. Justice Colman*—Arden executor v. Probert.—*Mr. J. Evans*.
 Winchester, *Mr. Justice Erskine*—Doe d. Mundy v. Moadell.—*Mr. Serjeant Bompas*.
 Bodmin, *Mr. Justice Wightman*—Palmer v. Gray.—*Mr. Erle*.
 Taunton, *Mr. Justice Wightman*—Bishop v. Fry.
 Taunton, *Mr. Justice Wightman*—Gillard v. Brittan and others.—*Mr. Erle*.

Moved after the fourth day of Easter Term.

Middlesex, *Mr. Baron Gurney*—King v. Bowen and another.—*Mr. E. V. Williams*.
 London, *Mr. Baron Parke*—Neilson v. Harford.—*Mr. Attorney General*.
 London, *Mr. Baron Parke*—Neilson v. Harford.—*Sir William Fullett*.
 London, *Mr. Baron Gurney*—Waring v. King and others.—*Mr. M. D. Hill*.

LAW BILLS IN PARLIAMENT.

Royal Assents.

11th May, 1841.

Indemnity.

18th May, 1841.

Slave Compensation.

Lease and Release.

Banking Copartnership.

House of Lords.

For holding Petty Sessions and Summary Trials.

[In Committee.] Earl Devon.

To limit the Criminal Jurisdiction of the Quarter Sessions.

[For 2d reading.]

Tithes Recovery.

[For 2d reading.]

Double Costs, &c.

[For 2d reading.]

Costs in frivolous Suits.

[Passed.]

To amend the Law of Principal and Factor.

House of Commons.

For facilitating the administration of justice (in Chancery), No. 1. Attorney General.

[To consider Report, Monday, May 23.]

To facilitate the Administration of Justice in the House of Lords and Privy Council, No. 2.

Sir E. Sugden.

[In Committee.]

County Courts.

Mr. F. Maule.

[To consider Report.]

Bankruptcy, Insolvency, and Lunacy.

[In Committee.]

To remove objections to the admission of evidence on the ground of interest.

[In Committee.] Mr. C. Buller.

To allow Writs of Error in *Mandamus*.

Sir F. Pollock.

Poor Law Amendment.

[In Committee.]

For the Registration of Parliamentary Electors.

[In Committee.] Lord John Russell.

For the better regulation of Railways.

Mr. Labouchere.

County Coroners' Election.

Mr. Packington.

[In Committee.]

Drainage of Lands.

Mr. Handley.

[In Committee.]

Copyhold and Customary Tenures.

Mr. Hope.

Administration of Justice in Boroughs.

[In Committee.] Attorney General.

To facilitate the Transfer of Real and Personal Property held in trust for Charitable Purposes.

Mr. James Stewart.

[Report May 23d.]

[This bill passed through Committee on Thursday, and is to be reported on Monday, May 23d.]

Designs Copyright.

[For 2d reading.]

To appoint a Public Prosecutor.

[For Select Committee.] Mr. Ewart.

To exempt Tithes from Parochial Assessments.

Mr. Hodges.

Middlesex Sessions.

[In Committee.]

County Bridges.

[In Committee.]

Punishment for Offences against the Person.

[In Committee.] Lord J. Russell.

Punishment for Embezzlement.

[For 2d reading.] Lord J. Russell.

To amend the Law of Sewers.

[In Committee.]

Enrolment of Burgesses.

[In Committee.]

Turnpike Acts Amendment.

[In Committee.]

Stamp Duties on Law Proceedings.

[For 2d Reading.]

THE EDITOR'S LETTER BOX.

The Cause Lists for Trinity Term have rendered it necessary to defer several communications.

The Letters of "M. A. J.," and "One of the Unfortunates," will be inserted as early as practicable.

The paper on the admission of parol evidence to explain documents, shall be considered.

The request of "Students" shall be attended to.

The Legal Observer.

SATURDAY, MAY 29, 1841.

— “Quod magis ad nos
Pertinet, et necire malum est, agitamus.

HORAT.

THE RESULTS OF THE SESSION.

We are now pretty well enabled to say what will be the result of the Session, so far as the law is concerned.

We are still in hopes that the bill for giving new Judges to the Court of Chancery will pass into a law. So far as the House of Commons is concerned, there is only one point to dispose of—the clause relating to the Accountant General. We should have preferred a bill being brought in to regulate the office, subject to the right of the existing holder; but still we by no means think the proposition of Sir Edward Sugden, which goes to limit the fees of the office to 4000*l.* per annum, an unreasonable one. We would certainly go further than this, and say that in all future appointments the emoluments should be put on the same footing as those of the other Masters in Chancery, that is to say, 2500*l.* a-year. Subject, however, to this point, there will be no opposition in the House of Commons to the bill; and we would fain hope that as the bill passed the House of Lords last Session, there will be no opposition to it in the present. We do sincerely trust, in the name of the profession and the suitor, that in the present conflict of parties, the bill will not be lost.

Sir Edward Sugden having very properly succeeded, on Monday, in postponing the Chancery Bill, endeavoured, on the same evening, to stop two other bills, which we do not think are open to objection, and which, on the contrary, we hope to see carried in the course of the present Session.

The first of these was the Charitable Trusts Bill, which stood for Report, the object of which we have already explained to

our readers.* A clause, however, had been proposed of this nature: By the Municipal Corporation Act, 5 & 6 W. 4, c. 76, s. 71, the charitable property vested in the corporations in existence before the passing of that act was taken out of the old corporations, and all their estate and their powers over it were directed to cease; and it was declared that the Lord Chancellor might make such orders as he should see fit for the administration of such trust estates. Since the passing of the act new charitable trustees have been appointed; but both the Lord Chancellor and the Master of the Rolls have declined making any order as to the trust property. The difficulty, therefore, is, that in many cases it is impossible to make a valid title, or to deal safely with this property at all; and in some instances the rents cannot be collected, and the persons in possession have set the corporation at defiance. In this state of things, Mr. Stewart, who has charge of the bill, proposed a clause for vesting the trust property in the charitable trustees, who have been or who may hereafter be appointed. This clause was repeatedly printed in the votes, and we should have thought would certainly not have hindered the progress of the bill. However, Sir E. Sugden thought differently, and on this ground resisted the progress of the bill. The House, however, was of a different opinion, and he withdrew his amendment, and the bill now stands for a third reading.

The other and more important bill which stood for Monday, was the Copyhold Bill, its previous stages having passed very nearly in silence. The reason of this silence was that, so far as we know, no one opposed it

* See 21 L. O. 385 & 437.

but Sir Edward Sugden, and he was not present on any other occasion than the last. He made up, however, for the lateness of his opposition by its determination. Although the bill had passed through Committee on the previous Thursday, he insisted on its being re-committed, in order to enable him to state his objections *seriatim*; but finding the house against him on this, however, he stated his objections fully on the bringing up the Report. He complained that the bill had not been sufficiently discussed—that it contained important provisions affecting the property of the country—he objected to there being any compulsion on the tenants, and to the consideration for the commutation being a corn rent. These objections were answered by Mr. Stewart, Mr. Hope, Mr. Aglionby, and others; and it was supposed that the opposition of the right hon. gentleman was at an end. Not so, however. Finding that if he divided the House, most, if not all, of the members even on his own side of the House would vote against him, he took the very unusual course of requesting the Speaker to go through the bill, clause by clause, and thus to enable him to state his objections *seriatim*. The first clause he fixed on for objection, was clause 8, which authorises the payment of the Commissioners out of the Consolidated Fund; but here, also, with the exception of a solitary hustings speech from Mr. Wakley, he found himself totally without support. Lord John Russell said he thought that the copyhold tenure was a national grievance, and it was fair to call on the state for some assistance in getting rid of it. The Attorney-General said that the bill would be a step towards wiping off what was now a blot on the laws of England, and even Mr. Hume agreed that the enfranchisement of copyholds was a proper object for which the country should be called upon to pay, and said that he thought they were not here called upon to pay too much. Finding himself, therefore, standing nearly alone, Sir Edward Sugden gave way, and the third reading was fixed for Thursday, which has since been altered to Wednesday next. Considering, therefore, that this important bill has the support of all parties, with scarcely an exception, and that it has already passed the House of Lords, we consider that it will shortly become the law of the land.

It is proper, however, to state, that in the course of the discussion, Mr. Stewart declared his opinion unchanged with respect to the compulsory principle—that he took this bill merely as a step to a more complete

measure, and that he would, if he had the opportunity, in the next Parliament, bring in a bill himself for the purpose of making the enfranchisement compulsory on the lord, on a proper equivalent being given to him for his rights.

But here we think we may almost draw a line, and say that nothing else *will* pass. The County Courts Bill, and the accompanying bill on bankruptcy and insolvency, have been put off to the 7th of June; but this is only preparatory to being postponed for the session. This, from the first, we were sure would be their fate. The English Registration Bill, and the Right of Voters' Bill, have been already abandoned, and of the long list which we have given, little will shortly remain. It is possible that Mr. Kelly's Punishment of Death Bill may pass in a modified shape, but the law will remain very nearly the same in this respect as at the commencement of the session.

LOCAL COURTS.

THE County Courts Bill, and the Bankruptcy, Insolvency, and Lunacy Bill, have been postponed to the 7th of June, and from this and other indications it is clear that these measures will not pass in the present session.

The various Small Debt Court Bills which were deferred until the general measure was decided, are again in progress. The following resolution was made by the House of Commons on Tuesday, the 26th instant, under which these bills may proceed with great rapidity.

"That in the present Session of Parliament, all bills for the more easy recovery of small debts may proceed through their several stages in manner hereinafter mentioned, in lieu of that prescribed by the existing standing orders:—

"That there be one clear day between the first and second reading.

"That one clear day's notice be given of the second reading, and that it shall be sufficient if the *braviato* shall have been laid on the table of the house one clear day before the second reading, and shall have been printed.

"That there be two clear days between the second reading and the sitting of the Committee thereupon, and due notice given accordingly.

"That petitioners against any such bills may be heard before the Committee on the

bill, upon a petition presented at any time before the sitting of the Committee."

Under this resolution of the house, the bills for the following places have been advanced :—

For Second Reading.

St. Helen's	Newark
Totnes	King's Norton
Atherstone	Burnley
Sleaford	

In Committee.

Gainsborough	Launceston
Exeter	

The other bills before the house are for the following places :—

Blackburn	Salisbury
East Retford	Stoke-upon-Trent
Hatfield	Sunderland
Ilfracombe	Tiverton
Kidderminster	West Bromwich
Lincoln	Wigan
Runcorn	

THE PROPERTY LAWYER.

ILLEGITIMACY.

The important case of *Doe d. Birthwhistle v. Field*, which has been before the Court since 1836, (see 5 B. and C., 438,) as ultimately decided by the House of Lords, has been very recently reported by Mr. Scott, 1 Scott, N. S., 828. This case, as our readers will probably recollect, involved the question whether a person born in Scotland, of parents domiciled there, but not married till after his birth, though legitimate by the law of Scotland, and capable of succeeding to heritable property in that country, can succeed to real estates in England, and the House of Lords has decided, Lord Brougham dissentiente, that he cannot. Judgment was delivered by Tindal, C. J., and we shall extract a portion of it. It collects all the authorities on the subject.

"There can be no doubt but that marriage, which is a personal contract, when entered into according to the rites of the country where the parties are domiciled, and the marriage celebrated, would be considered and treated as a perfect and complete marriage throughout the whole of Christendom. But it does not, therefore, follow, that, with the adoption of the marriage contract, the foreign law adopts also all the conclusions and consequences which hold good in the country where the marriage was celebrated. That the marriage in question was not celebrated in fact until after the birth of *B.*, is to be assumed from the form of the question. Indeed, except on that supposition, there would be no question at all.—Does it follow, then, that because the Scotch hold a marriage celebrated between the parents after a birth of a child, to be conclusive proof of an actual marriage, celebrated

before, a foreign country which adopts the marriage as complete and binding as a contract of marriage, must also adopt this consequence? No authority has been cited from any jurist or writer on the subject of the law of nations to that effect; nothing beyond the general proposition, that a party legitimate in one country is to be held legitimate all over the world. Indeed, the ground upon which this conclusion of *B.*'s legitimacy is made by the Scotch law, is not stated to us; and we have no right to assume any fact not contained in the question which your lordships have proposed to us. We may, however, observe, that in the course of the argument at your lordship's bar, the ground has been variously stated upon which the laws of different countries have arrived at the same conclusion. It was asserted, that by the law of Scotland, the subsequent marriage is not to be taken to be the marriage itself, but only evidence, though conclusive in its nature, of the marriage prior to the birth of *B.*, that the canon law rests the legitimacy of the son born before such marriage upon a totally different ground, viz., that having been born illegitimate, he is made legitimate, *legitimus*, by the subsequent marriage, by a positive rule of law, on account of the repentance of his parents; whereas, by the Scotch law, a marriage previous to his birth is conclusively presumed, so that he was always legitimate, and his parents had nothing to repent of. *Pothier*, on the other hand, (*Contrat de mariage*, part 5, c. 2, art. 2), when he speaks of the effect of a subsequent marriage in legitimating children born before it, disclaims the authority of the canon law, nor does he mention any fiction of an anteceded marriage; but rests the effect on the positive law of the country. He first instances the custom at Troyes "Les enfans nés hors mariage, de soluto et soluta, puis que le pere et la mere s'epousent, l'un l'autre, succedent et viennent et partagent avec les autres enfans, si aucuns il y a. Seus art. 92, a une semblable disposition." And then adds, "C'est un droit commun recu dans tout le royaume que personne ne revoque en doute." Now, it would never be contended by any jurist, that the law of England, with respect to the succession of land in England, would be bound to adopt a positive law of succession like that which holds in France, the distinction being so well known between laws that relate to personal *status* and personal contracts, and those which relate to real and immovable property, for which it is unnecessary to make reference to any other authority than that of Dr. Story in his admirable Commentaries on the Conflict of Laws, see section 430, *et seq.* where all the authorities are brought together. And if such positive law is not upon any principle to be introduced to controul the English law of descent, what grounds is there for the introduction into the English law of descent, not only of the contract of marriage observed in another country, which is admitted to be adopted, but also of a fiction with respect to the time of the marriage? that is, in effect, of a rule of evidence

which the foreign country thinks it right to hold? But, admitting, for the sake of argument, and we are not called upon to give our opinion on that point, that *B.* legitimate in Scotland, is to be taken to be legitimate all over the world, the question still recurs, whether, for the purpose of constituting an heir to land in England, something more is not necessary to be proved on his part than such legitimacy: and if we are right in the grounds on which we have rested the first point, one other step is necessary, namely, to prove that he was born after an actual marriage between his parents. And if this be so, then upon the distinction admitted by all the writers on international law, the *lex loci rei sitæ* must prevail, not the law of the place of birth. My lords, in the course of the discussion, some stress appears to have been placed on the argument, that if *B.* had died before *A.* the intestate, leaving a child, such child might have inherited to *A.*, tracing through his legitimate parent; and then it was asked,—if the child might inherit, why might not the parent himself inherit? But the answer to that supposed case appears to be that, if the parent be not capable of inheriting himself, he has no inheritable blood which he can transmit to his child; so that the child could not, under the assumed facts have inherited; and the question, therefore, becomes in truth the same with that before us. The case supposed would be governed by the old acknowledged rule of descent, "*Qui doit inheriter al pere doit inheriter al filz.*" My lords, the two decided cases that have been relied on in the course of the argument, *Shedden v. Patrick*, 8 D. C. & R. 190 n.; and the *Strathmore Peerage case*, 2 Jac. & W. 547, do not upon consideration, create any real difficulty. Those cases decide no more than that no one can inherit without having the personal status of legitimacy,—a point upon which all agree; but they are of no force to establish the main point in dispute in this case, viz.: that such personal status is sufficient of itself to enable the claimant to succeed as heir to land in England."

CHANGES IN THE LAW,

IN THE PRESENT SESSION OF PARLIAMENT.
No. IV.

BANKING AND OTHER COPARTNERSHIPS. 4 Vict. c. 14.

An Act to make good certain Contracts which have been or may be entered into by certain Banking and other Copartnerships.
[18th May 1841.]

1. No association or copartnership, or contract entered into by any of them, to be illegal or void by reason only of spiritual persons being members thereof. No spiritual person beneficed or performing ecclesiastical duty, to act as a director.—Whereas divers associations and copartnerships consisting of more than six mem-

bers or shareholders have from time to time been formed, for the purpose of being engaged in and carrying on the business of banking, and divers other trades and dealings; for gain and profit, and have accordingly for some time past been and are now engaged in carrying on the same, by means of boards of directors or managers, committees, or other officers acting on behalf of all the members or shareholders or of other persons otherwise interested in such associations or copartnerships: And whereas divers spiritual persons having or holding dignities, prebends, canonicries, benefices, stipendiary curacies, or lectureships, have been members or shareholders of or otherwise interested in divers of such associations and copartnerships: And whereas it is expedient to render legal and valid all contracts entered into by such associations or copartnerships, although the same may now be void by reason of such spiritual persons being or having been such members or shareholders or otherwise interested as aforesaid; Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that no such association or copartnership already formed, or which may be hereafter formed, nor any contract either as between the members, partners, or shareholders composing such association or copartnership for the purposes thereof, or as between such association or copartnership and other persons, heretofore entered into or which shall be entered into by any such association or copartnership already formed or hereafter to be formed, shall be deemed or taken to be illegal or void, or to occasion any forfeiture whatsoever, by reason only of any such spiritual person as aforesaid being or having been a member, partner, or shareholder of or otherwise interested in the same; but all such associations and copartnerships shall have the same validity, and all such contracts shall and may be enforced in the same manner, to all intents and purposes, as if no such spiritual person had been or was a member, partner, or shareholder of or interested in such association or copartnership: Provided always, that it shall not be lawful for any spiritual person holding any cathedral preferment, benefice, curacy, or lectureship, or who shall be licensed or allowed to perform the duties of any ecclesiastical office, to act as a director or managing partner, or to carry on such trade or dealing as aforesaid in person.

2. In all actions and suits by copartnerships established since the session of 2 & 3 Vict., the defendant to be entitled to taxed costs, and the Court to make order for further costs:—And be it enacted, that in all actions and suits which shall have been brought or instituted by or on behalf of any such association or copartnership which may have been formed since the end of the session of Parliament held in the second and third years of the reign of her present Majesty, in case any defendant therein shall, before the twenty-ninth day of March

one thousand eight hundred and thirty-eight, by plea or otherwise, have insisted on the invalidity of any contract thereby sought to be enforced, by reason of any such spiritual person as aforesaid being or having been a member or shareholder in such association or co-partnership, such defendant shall be entitled to the full costs of such plea or other defence, to be paid by the plaintiff, and to be taxed as the Court in which the said action or suit shall be depending, or any Judge thereof, shall direct; and in order fully to indemnify such defendant it shall be lawful for such Court of Judge to order the plaintiff to pay to him such further costs (if any) of the said action or suit as the justice of the case may require.

3. *Act may be amended this session.*—And be it enacted, that this act may be amended or repealed by any act to be passed in this present session of Parliament.

REMOVAL OF WESTMINSTER COURTS.

THE Select Committee of the House of Commons met again on Tuesday, when the chair was taken by Sir F. Pollock, and subsequently by Mr. Freshfield. The other members of the Committee who attended during the day were Sir James Graham, Mr. Hume, Mr. Strutt, and Sir E. Wilmot. The witnesses examined were the Earl of Devon, Master Farrer, and Mr. Colville, one of the Registrars of the Court of Chancery. The Ushers of the Common Law Courts were examined on the want of accommodation for juries and witnesses, as well as the officers of the courts, and counsel and attorneys; and evidence was given by Mr. Cadogan, the surveyor, of the dimensions of Lincoln's Inn Fields, and the value of other sites which had been suggested. There was not time to complete the evidence, and it is expected that another meeting will soon take place.

We hope the inquiry will be concluded and the Report of the Committee made in the course of the ensuing week.

ABOLITION OF LEASE FOR A YEAR.

A CORRESPONDENT requests that we will state in what form it will be most advisable to allude to the act for rendering a lease for a year unnecessary? Whether by way of recital, or by altering the language following the words "in his actual possession," &c.

[All that the 4 Vict. c. 21, requires is that the release "shall be expressed to be made in pursuance of the act," (see the act printed

ante, p. 52,) but this was only intended to prevent the liability to stamp duty fixing on any other kind of release than a release grounded on a lease. We apprehend, therefore, that as it was the intention of the legislature to get rid of the lease for a year, that a very slight reference to the act will be held to be sufficient to bring the release within its provisions. The reference may, therefore, be by way of recital, or by way of proviso at the end of the deed—or, in place of the usual reference to the lease for a year—or, as on the whole we think the better way, immediately after the witnessing part, "Now, this indenture witnesseth that in pursuance of an act made and passed in the 4th year of the reign of her present Majesty, and entitled 'An Act, &c.,' he the said [grantor,] &c." The practice, however, we do not doubt, will shortly become settled.—Ed.]

ON THE MODE OF CONDUCTING THE EXAMINATION.

[We insert the following letter, because all classes of the profession, are entitled to be heard on their real or supposed grievances.]

To the Editor of the Legal Observer.

Sir,

You have very kindly (in a late No. of the *Legal Observer*) given the Questions at the last Easter Term Examination, which I consider extremely useful as regards many of your young readers, who are thus afforded an opportunity of improving themselves, and preparing for their examination, by referring to the authorities and books of practice, and writing out answers to the questions, in which I have lately employed myself. I cannot, however, refrain from observing that many of the questions appear to be extremely difficult. Indeed, I, and many others, much more capable of forming an opinion on the subject, think the examination would be far more satisfactory, and better disclose the knowledge and acquirements of the student, if conducted *vis à voce*, as I believe medical examinations are conducted.

By this mode, though it might impose greater trouble on the examiners, I am convinced a much more just opinion might be formed of the applicant's fitness to practise in that branch in which he may be called upon on having an opportunity of exercising his talents, which, I presume, is the grand object of the examination.^b

^a In order to examine a considerable number of persons, some of the questions will unavoidably appear to be difficult to some of the candidates. The questions have been generally approved. Ed.

^b The regulations of the judges require the examination to be conducted by written or

It is also very generally suggested in the profession, that the candidate for admission should only be examined in those branches of law which he has had an opportunity of studying, or will, in all probability, be called upon to practise; for instance, I am articulated to one of the first firms in the profession, but their practice is exclusively confined to conveyancing and equity; not a common law action is there in the office, and a docket was never struck by the firm since it commenced business. Criminal law, or practice before magistrates, would, I believe, be rejected upon any terms for the best client they have; therefore, I have not had any opportunity of acquiring sufficient knowledge in the three last branches, to enable me to pass a satisfactory examination in them—it being quite clear, that actual practice as well as reading is essentially necessary, to render any one sufficiently *au fait* to answer the questions which are usually submitted to the candidates.

A person labouring under these disadvantages, may by being unable to answer questions in all the branches, be refused his certificate, however satisfactory may be his answers in those to which he has devoted himself.^c

ONE WHO HAS NOT PASSED.

SUPERIOR COURTS.

Vice Chancellor's Court.

INJUNCTION.—SPECIFIC BEQUEST.—ASSENT OF EXECUTORS.

Where executors have allowed their testator's widow, to whom a life interest was given in all his property, to continue in possession and carry on the business formerly carried on by the testator for the support of herself and family, the Court will not at their instance, prevent her from continuing in the management of the property unless some satisfactory reasons can be suggested for so doing, although it will not restrain them from interfering.

In this case, an injunction had been granted *ex parte*, on the 6th Nov. last^a, to restrain the defendants from interfering in the farming business formerly carried on by the testator, and from preventing the plaintiffs (the testator's

printed questions. This matter was no doubt well considered, and it is probable that those who might be rejected on a *vivâ voce* examination, would complain of the hardship of such a proceeding, and the want of a satisfactory appeal, which is now afforded on the written papers. **ED.**

^c A person admitted on the roll of one Court, being entitled to practise in all, should shew a due degree of knowledge in all. The Rule of Court must be altered before any alteration can take place in the mode of examination. The result shews that the questions are not very difficult, for ninety-five out of every hundred are able to pass. **ED.**

widow) drawing cheques on the bankers, in whose hands the produce of such business had been deposited, and to whom they had given notice not to honor the plaintiff's cheques.

Jacob and Jemmett now moved, on the case shewn by the answer, to dissolve the injunction. It was true, that the plaintiff has since the death of the testator, continued to carry on his business; but it was entirely under the direction and superintendence of the defendants, as his trustees, one of them being in constant attendance on the premises, as appeared by the answer, nearly every day. They could not be said, therefore, to have given up any controul which they were entitled to exercise over the property; and when they saw there was a probability of the interests of the testator's children being prejudicially affected, through an improvident arrangement on the part of the plaintiff, it was their duty to interfere. There were, also, other interests to protect, for there was a mortgage upon a portion of the property, and the testator's debts still remained unsatisfied. The defendants did not object to the plaintiff's continuing in the mansion house, which was occupied by the testator, and as the plaintiff had admitted that she carried on the business as their agent, she could not properly object to their continuing a controul over the conduct of it.

K. Bruce and Coleridge, in support of the injunction, insisted upon the plaintiff's right to carry on the business and manage the property without any interference. The testator had given the enjoyment of the whole of his property to the plaintiff for her life, unless she should marry again without the consent of the trustees, and it was evident he contemplated the certainty of the plaintiff continuing to carry on his business, and so the defendants had admitted by giving her the dominion over it. The terms of the bequest were clearly specific, and wherever a question fairly presented itself as to the construction of such a bequest, the *Lord Chancellor* and his Honor had invariably shown a disposition to cut down the rule in *Howe v. Lord Dartmouth*,^b as much as possible in favour of the tenant for life. With regard to the debts, it did not appear that any claim had been made upon the defendants in respect of them, and the mortgage, if it were to affect the personal estate in the first instance, must eventually be thrown altogether on the real estate, for the doctrine of marshalling clearly applied to it, *Luthins v. Leigh*.^c It was also evident that the defendants had no just cause of complaint respecting the plaintiff's management, for the injunction was obtained in November last, the answer was filed on the 25th of January, and the notice of motion not given till the 5th of May.

The *Vice Chancellor*.—If the executors rely on the fact that the plaintiff was put into possession as their agent, it becomes a question whether they are at liberty to say so; for the

^a See *L. O. v. xxi*, No. 627

^b 7 Ves. 137.

^c *Forrester*, 53.

Court must look to the real rights of the parties, and if she had a superior right, it could not be controlled by the exercise of any assumed authority on the part of the trustees. *Prima facie*, there is sufficient on the will to shew the testator intended that while the plaintiff continued his widow, she should carry on the business. It must be admitted, that the right of the wife as legatee, and to carry on the business, must be subject to the superior rights of creditors and legatees; but there is no evidence of pressure, and although by the executors' answer, there appear to be debts to the amount of 250*l.*, exclusive of the mortgage, it does not appear they have been called upon to pay any part of them. There is also no evidence of mismanagement, for when the plaintiff took possession, there was a balance at the bankers of 245*l.*, which has been increased to upward of 600*l.* It would not be right, then, to take the possession of the leasehold part of the property from the plaintiff, as there is not at present any case for the interference of the Court; but as the balance has remained in the banker's hands ever since the injunction was granted, it is clear, she can carry on the business without the use of it: and as the debts are unsatisfied, it would not be proper to take from the executors their dominion over it. The injunction must, therefore, be dissolved as to that balance, and continued as to the other particulars. *Bates v. Willis*, May 24th 1841.

Rolls.

SPECIFIC PERFORMANCE.—CONSTRUCTION OF WILL.—WORDS OF RECOMMENDATION.

Where a testator in making a bequest uses words of recommendation from which a trust may be inferred, the Court will look to the whole will for the purpose of ascertaining the testator's intention with regard to such bequest. A request that the legatee should consult the trustee appointed by the will, and should make a will in favour of another party, is not sufficient of itself to constitute a trust.

In a suit for specific performance, the Court will not allow costs to a purchaser who has taken a fair objection upon a point of construction, although the decision may be against him.

The testator in this case after making certain specific bequests, gave and devised all the rest, residue, and remainder of his real and personal estate to his son Nathan Gray, his heirs, &c. for his sole use and benefit, and appointed him sole executor of his will, which he concluded in these words: "the necessity of keeping the trade and estates together, to provide for the mortgages to which my estates are liable and for other charges, has induced me to repose my confidence in my said son Nathan that he will assist his brothers and sisters and their families; but my particular request is, that as to all that regards his brothers and sisters he will not act or make any engagement

or promise without the advice of my trustee; and also my particular request is that my said son Nathan should make a will, and if he have no family, that the brewery plant and public houses, may be left by him to my son Owen; but it is my will that my said son Nathan shall not be subject to any suit at law or in equity as to any of the matters as to which I have placed my confidence in him." A portion of the testator's property was sold by Nathan, who claimed it absolutely, and the purchaser having refused to complete on the ground that the testator intended to create a trust, a bill was filed for specific performance, which now came on for hearing.

Kindersley and Metcalf for the plaintiff, insisted, that the bequest was absolute in favour of Nathan, although it might be conceded that if the concluding part of the will, "that his said son should not be subject to any suit, &c." had not been added, the construction would have been in favour of a trust.

Pemberton and E. Girdlestone, contra, contended, that all the terms used in the will with reference to the bequests to Nathan, must be considered as words of recommendation, and that there was a distinct trust in favour of the testator's son Owen.

The Master of the Rolls said, his impression was, that it was not a trust; but he should consider the will.

April 28th. His lordship said, it was evident from the terms of the will that the testator intended to provide for all the members of his family. After devising certain estates to his wife and his son Owen, he directed that all the principal and interest due from him on mortgage of those estates, should be paid by his son Nathan, but he was not to be called upon to provide for such charges until required by the mortgagees. The next bequest was of certain annuities, for the security of which Nathan was to give bonds. Then portions were given, which were to be secured in like manner; and afterwards an additional annuity to one of his sons, which was also to be secured by the bond of Nathan, but he was not to be subject to any legal process for not giving the security before pointed out. Then followed the words upon which the question arose. [His lordship read the passage of the will set forth in the former part of the case, and continued:] Those words apply to all, but the distinction was so plain that his lordship said he had no hesitation in saying it was not a trust. An objection having been made to the allowance of the purchaser's costs, his lordship said that it was a fair question to be raised, and such costs ought therefore to be allowed.

Brierley v. Boucher, April 26th, 1841,

Queen's Bench.

[Before the Four Judges.]

CORONER.—INQUISITION.

A coroner's jury cannot impose a deodand where the finding is manslaughter. But the jury ought to find the value of the goods moving to the death, so that they may be forfeited, if on the indictment the verdict be guilty:

Lord Denman, C. J., delivered judgment in this case. There was a motion in this case to quash an inquisition where a coroner's jury had given a verdict of manslaughter against the defendant for occasioning the death of a person by the mismanagement of a steam-boat. Several objections were made to the form of the inquisition, and the question in substance was, whether a coroner's jury can lay a deodand in any case where the verdict is that of murder or manslaughter. We think that the deodand may be laid under such circumstances, and that for that reason, the present inquisition must be quashed. *Ex parte Carruthers*^a was referred to on the other objections; but with them we do not feel ourselves called upon to deal, as the objection to the deodand will decide this application. All the authorities in the books, where deodands have been imposed, are those in which the death was occasioned by misadventure. Whatever may have been the origin of deodands, there is no reason to countenance the belief that they were imposed in the light of fines on the persons by whom the death was brought about. But the principle on which they were established is so much a matter of conjecture, that we do not feel inclined to increase the extent to which deodands are applicable, but rather to limit them to cases established by long practice, and recognized by law. In 3d Coke's Institute,^b the cases in which deodands can be imposed are thus described:—"Deodands are, when any moveable thing inanimate, or beast animate, do move to, or cause the untimely death of any reasonable creature by mischance, without the will, or fault, or offence of himself or of any person." The stat. 4 Edw. 1, stat. 2, *De Officio Coronatoris*, speaks of deodands as to be given in cases in which the finding is not connected with any offence. They are described in the same manner in Hale's Pleas of the Crown,^c where it is said—"Upon the death of a man by misadventure, &c. the inquisition ought to inquire of the goods that occasioned the death, and the value of them, and the villata where the mischance happened shall be charged with process for the said goods or their value. And this is the reason that in every indictment of murder, manslaughter, &c., the indictment finding that he was killed with a sword, staff, &c. ought to find the price, because the king is entitled to that instrument whereby the party was killed, or the value hereof, and that although it were the sword

of another man, and not his that gave the stroke." Whether the king is so entitled to them must depend upon the finding of the verdict on the indictment, and not on the inquest; but it is right that the coroner's jury should find the value of the steam-boat, but not that, to that finding, should be added that the steam-boat was moving to the death, for this latter finding is only proper where the death happens from misadventure alone. Lord Hale treats this as perfectly clear, and in Fleta^d deodands are treated in the same manner. So they are in Bacon's Abridgment,^e in Foster's Crown Law,^f in East's Pleas of the Crown,^g in Hawkins,^h in Staundford's,ⁱ In Foxley's case,^j the same language is used, and it is said "that deodands are goods which occasion the death of a man by misadventure, and are not forfeited till the matter is found of record. So that we have no difficulty whatever in declaring that this finding of a deodand in the case of manslaughter is bad, and that the inquisition so far as respects that finding, must be quashed.

Rule accordingly.—*The Queen v. Polgarth*, T. T. 1841. Q. B. F. J.

Queen's Bench Practice Court.

BANKRUPT.—BOND UNDER 1 & 2 VICT. c. 110, s. 8.—JURISDICTION.—BANKRUPT COURT.

If a bond is given pursuant to provisions contained in the 8th section of 1 & 2 Vict. c. 110, for the purpose of compelling, in certain events, the defendant to commit an act of bankruptcy, when it has been satisfied, may be ordered to be directed to be delivered up to be cancelled, on an application to the Court in which the action is brought, and there is no occasion to make a specific application for that purpose to the bankrupt court.

In this case an action had been brought by the plaintiff against the defendant, who was a trader, and the usual affidavit of debt required by the 1 & 2 Vict. c. 110, s. 8, was made, for the purpose of rendering him a bankrupt, in case he should not comply with the provisions of that statute in giving the security prescribed within the requisite time. The action proceeded, and the bond was given in conformity with the provisions of the statute, and deposited with the plaintiff's attorney. Ultimately the bond was satisfied, and was still remaining in the hands of the plaintiff's attorney. An application was then made to this Court, in which the action was brought, to have the bond delivered up to be cancelled, on the ground that it had been satisfied. A rule to that effect having been obtained,

Knowles shewed cause, and contended that the defendant in making an application to this court had mistaken his jurisdiction, as this Court had no power under the statute to direct the instrument in question to be delivered up to be cancelled. This application should have

^a 2 Man. & Ryl. 397.^b 3 Inst. c. 9.^c c. 32.^d Bk. 4, c. 26.^e Tit. Deodand.^f 1 Hawk. C. 26.^g 5 Rep. 110.^h Tit. Deodand.ⁱ 386.^j 20.

been made to the Court of Bankruptcy, which, according to the provisions of the 8th section, was clearly the jurisdiction to which the application should have been made. This appeared from merely reading the words of the section. Its language was "that if any single creditor, or any two or more creditors being partners, whose debt shall amount to 100%. or upwards, or any three or more creditors whose debts shall amount to 200%. or upwards, of any trader within the meaning of the laws now in force respecting bankrupts, shall file an affidavit or affidavits in her Majesty's courts of bankruptcy, that such debt or debts is or are justly due to him or them respectively, and that such debtor, as he or they verily believe, is such trader as aforesaid, and shall cause him to be served personally with a copy of such affidavit or affidavits, and with a notice in writing requiring immediate payment of such debt or debts; and if such trader shall not within twenty-one days after personal service of such affidavit or affidavits and notice, pay such debt or debts, or secure or compound for the same to the satisfaction of such creditor or creditors, or enter into a bond, in such sum and with such two sufficient sureties as a commissioner of the Court of Bankruptcy shall approve of, to pay such sum or sums as shall be recovered in any action or actions which shall have been brought or shall thereafter be brought for the recovery of the same, together with such costs as shall be given in the same, or to render himself to the custody of the gaoler of the court in which such action shall have been or may be brought, according to the practice of such court, or within such time and in such manner as the said court or any judge thereof shall direct, after judgment shall have been recovered in such action, every such trader shall be deemed to have committed an act of bankruptcy on the twenty-second day after service of such affidavit or affidavits and notice, provided a fiat in bankruptcy shall issue against such trader within two calendar months from the filing of such affidavit, but not otherwise." From these provisions it appeared that the bond was to be given to the satisfaction of the Bankrupt Court, and therefore it must be to that court that the jurisdiction over it must belong.

Sir F. Pollock supported the rule, and contended that although the bond was originally to be entered into according to the satisfaction of the Bankrupt Court, the discretion of the court in which the action was brought must be exercised as to what course ought to be pursued with respect to it. Actions might have to be brought on it, or it might have to be put in suit in this Court. In those cases, it must be quite clear that this court would have to exercise a jurisdiction over it. If so, a similar power must exist in the present case. Having the power, the facts of the case clearly warranted the interference of this Court, by analogy to the summary jurisdiction of the Court in cases of bail bond, which, when *functi*, were ordered to be delivered up to be cancelled.

Coleridge, J., thought that the provision of the 8th section of 1 & 2 Vict. c. 110, only gave

power to the Court of Bankruptcy to exercise a discretion with respect to giving bonds, but that when once given, it was for the court in which the action was brought to determine what ought to be done on it or with it. The present case was one in which the power of the court ought clearly to be exercised for the purpose of delivering up the bond. It was clear that it was satisfied, and therefore there was no reason for its remaining any longer in the hands of the plaintiff's attorney. The present rule must therefore be made absolute.

Rule absolute.—*Wilson v. Firth*, E.T. 1841. Q. B. P. C.

ACTION FOR MESNE PROFITS.—JUDGMENT BY DEFAULT.—TIME.—VILDELICET.—DAMAGES.

A judgment by default in an action for mesne profits only operates as an admission of nominal damages, although the period of time during which it is alleged that the defendant occupied is laid under a videlicet, and therefore evidence must be given of the period during which the defendant has actually occupied.

In this case possession of certain premises had been recovered in an action of ejectment; and an action for mesne profits was afterwards brought. In the declaration the time during which the premises had been improperly held by the defendant was stated by alleging two dates, from the one of which to the other the period in question was alleged to have elapsed. Neither of these dates was stated under a videlicet. The defendant suffered judgment by default, and a writ of inquiry was executed. At the trial, the plaintiff was unable to shew the defendant in possession of the premises. The under sheriff was of opinion that the plaintiff was only entitled to recover the costs of the action of ejectment and nominal damages for the time which the defendant had admitted by his suffering judgment by default that he had held possession of the premises. The jury found accordingly.

Knowles now moved for a new writ of inquiry, on the ground of misdirection. No doubt, as a general rule, a defendant, by suffering judgment by default only admitted a nominal sum to be due; but as in this case a particular period had been set forth in the declaration, during which it was alleged that the occupation had taken place, it was submitted that the defendant must be considered as having admitted himself in possession during that period.

Wightman, J., was of opinion that, as the plaintiff would not have been bound by those particular dates, if the action had been resisted so that he could not have recovered without proving occupation during the exact alleged period, the defendant had only admitted himself to be liable to a nominal amount by suffering judgment by default. The plaintiff was therefore bound to shew the defendant to be in occupation of the premises during the period in respect of which the claim was made. The rule prayed for must therefore be refused.

Rule refused.—*Ire v. Scott and another*, T. 1841. Q. B. P. C.

Judgments.

Attorney Gen. v. Pearson, *appeal*
 Terrell v. Matthews, *exceptions*
and further directions, L. C.
 El. of Falmouth v. Turner, *ditto*
 Attorney Gen. v. Craddock, *ditto*
 Rowley v. Adams, *appeal, L. C.*
 Daniel v. Dudley, *ditto*
 Booth v. Creswicke, *ditto*
 Bannatyne v. Leader, *cause, V. C.*
 Att. Gen. v. Coopers' Co., *appeal*
 Blewitt v. Roberts } *ditto*
 Ditto v. Stauffer }
 De Biel v. Thompson

Pleas and Demurrers.

Lindsell v. Thacker, *demurrer*
 Paine v. Wagner, *ditto*
 Day v. Daveron, *ditto*
 Willeford v. Sargent, *ditto*
 Duncuft v. Albrecht, *ditto*
 Nightingale v. Minshaw, *ditto*
 Snow v. Hole, *plea*
 Cooper v. Turner, *two demurrers*
 Selby v. Thompson, *plea*
 Proudfoot v. Hume, *ditto*
 Selby v. Machado, *demurrer*
 Strickland v. Strickland, *plea*
 Sanxter v. Foster, *demurrer*

Re-hearings and Appeals.

Sherwood v. Storer, *appeal*
 Tucker v. Stone, *ditto*
 Blanchard v. Cawthorne, *do.*
 Ashton v. Milne, *ditto*
 Gambia v. Gambier, *appeal*
 S. O. Barratt v. Howard, *ditto*
 „ Att. Gen. v. Brentwood, *ap.*
 „ Dixon v. Dixon, *appeal*
 „ Dearman v. Wyche, *ditto*

Judgment stand over until deft's cause is heard.

Bonsor v. Cox, *ditto*
 Herring v. Cloberry, *ditto*
 Ward v. Nash, *ditto*
 Child v. Knight, *ditto*
 Wood v. Lambirth — Ditto v. English, *rehearing*
 Evesham Union v. Smith, *appeal*
 D'Agile v. Fryer, *ditto*
 Moss v. Baldock — Moss v. Lake, *ditto*
 Loy v. Duckett, *ditto*

Trinity Term, 1841

Saturday, 22d May—Motions
 Monday, 24th May

*Causes, Further Directions, and**Exceptions.*

Newham v. Timbrell
 Villers v. Flint
 Pelham v. Towne
 Nott v. Chamberlain
 Price v. Smith
 Scaife v. Scaife
 Orred v. Shuttleworth
 Leonard v. Chambers
 St. George v. Landor
 Garrett v. Cockerell
 Dovehill v. Barnett
 Codrington v. Lyne
 Delfosse v. Butler
 Bailiff, &c. of East Retford v. Cottam
 Penruddock v. Watts

Abated.

Abated 1829

Abated 1830

Abated 1831

Abated.

Abated.

Abated

Abated

Abated

Abated

Abated

Morrison v. Roberts
 Dixon v. Robinson
 Brown v. Gaubert
 Stone v. Stewart
 Woodman v. Bostock
 Bolton v. Barnes
 Baring v. Theobald
 Kynaston v. Capper
 Edwards v. Rutherford
 Roberts v. Lee
 Pimer v. Miffien
 Clarke v. Clarke
 Adams v. Brine
 Beat v. Bayley
 Ponget v. Chambers
 Janaway v. Williams
 Ballard v. Triggs
 Morris v. Wilson, *fr. dirs. &c.*
 Hamilton v. Williams
 Yarnold v. Yarnold, *exons.*
fur. dirs. & costs
 Underwood v. Cole
 Bosanquet v. Burnand, *fr. dirs.*
 Weeks v. Baron

Abated 1832

Abated 1833

S. O. Hancock v. Teague, *exons.*
 „ Barratt v. Howard, *exons.*
 Abated Lacon v. Waterton—Cloberry v. Herring
 S. O. Harvey v. Leaf
 „ Arnold v. Hardwicke
 L. C. Griffith v. Richards—Hawley v. Powell
 S.O. Reece v. Taylor, *exons. 2 sets.*
 „ Bryant v. Beale, 3 causes
 Abated Flight v. Lake, *exceptions*
 „ Cochrane v. Curlewis
 S. O. Weatherall v. Brown, *fur. dirs. & costs*

„ Fermor v. Breeds
 Abated Stiff v. Simmonds
 S. O. Trought v. Trought
 Abated Griffith v. Browne
 S. O. Edward v. Lloyd
 Abated Sewell v. Murray
 „ Manistre v. Vines
 S. O. Hussey v. Bickerton
 Abated Richards v. Commins
 S. O. Heaton v. Blair, *exceptions*
 Abated Phillips v. Edwards
 S. O. Clough v. Bond

Attorney Gen. v. Laslett
 Powell v. Bettiss
 Woodforde v. Woodforde, 2 causes

Bowers v. Sherman, *fur. dirs. & costs*
 Rawlings v. Solomons
 Hill v. Stephenson
 Gordon v. Robley

Fox v. Beedham
 Gooch v. Wilson
 Barton v. Jayne, *at defendant's request*
 Shale v. Hodson
 Hurrell v. Tarn
 Haylar v. Field
 Barton v. Jagne

L.C. S.O. to amend—Sharwood v. Maine—Furze v. Sharwood

S.O. Neate v. Pink
 S.O. L.C. Davison v. Cutler, *fur. dirs.*
 Abated L.C. Earl of Falmouth v. Alderson

Abated L.C. Temple v. Duke of Buckingham
 Abated Breere v. Hawker
 Abated Long v. Thomson
 S.O. L.C. Slater v. Rumsey
 S.O. Loftus v. Thomas, *exons.*
 Abated Chambers v. Green
 Abated L.C. Wegg v. Ld. Petre, *at request of deft.*
 S.O. L.C. Wartnaby v. Shuttleworth
 Abated Burnett v. Booth
 Abated Willatts v. Marchant
 L.C. Jones v. Roberts—Jones v. Jones, 2 causes
 S.O.V.C. Robson v. Noel—Ditto v. Cutler—Cox v. Baker—Cox v. Woodland—Ditto v. Peter
 S.O. V.C. Melville v. Preston, *et c.*—Melville v. Prestoa
 Abated Hodgkinson v. Walley—V.C. Heath v. Hodgkinson
 Abated L.C. Campbell v. Fleming
 S.O. L.C. Wildes v. Davies
 „ Swan v. Bowden
 „ to Hunter v. Judd, *fur. present. V.C. ditto v. Ditto, cause V.C. Graves v. Burgess, at defendant's request*
 S.O. V.C. Attorney-Gen. v. Stone
 S.O. L.C. Pearse v. Brooke—Ditto v. Bryan
 Abated L.C. Hobby v. Collins
 „ „ Bryan v. Twigg, *em.*
 „ „ Emmott v. Brown—john
 „ „ Westover v. Foster
 „ „ Nail v. Punter
 L.C. Boys v. Trapp—Ditto v. Ditto
 Wood v. Lambirth — Ditto v. English, *fur. dirs. & costs*
 S.O. L.C. Grant v. Hutchison
 Abated L.C. Crutchley v. Gardner
 V.C. Brandon v. Budgen
 Abated V.C. Blathwayte v. Taylor
 V.C.S.O.G. Butcher v. Jackson
 Abated V.C. Fullwood v. Dowding
 Abated V.C. Pelham v. Turner, *at request defendant*
 V.C. Burdett v. Spencer
 „ Runciman v. Stillwell
 V.C. Mann v. Boys
 „ Thompson v. Day
 „ Attorney Gen. v. Mathie, *exceptions & fur. dirs.*
 „ Jones v. Jones, *fur. dirs. and costs*
 „ Waters v. Stephens, *ditto*
 „ Bainbridge v. Blair, *ditto*
 „ Burrows v. Venables, *ditto*
 „ Tritchley v. Williamson, *do.*
 „ Freeman v. Biers, *ditto*
 „ Trelawney v. Roberts, *exceptions & ditto*
 „ Tatlock v. Wellings, *fur. dirs. & costs*
 „ Sinkler v. Crotch, *exons.*
 „ Fletcher v. Northcote, *exons. 2 sets*
 „ Melland v. Gray, *exons.*
 „ Luckes v. Frost, *fur. dirs. and costs*
 „ Barnaby v. Filby

- Runceman v. Stilwell, *fur. dirs. & costs*
 S.O. V.C. Collett v. Collett
 V.C. Smith v. Pugh
 „ Gwynne v. Lloyd, *fur. dirs.*
 „ Hughes v. Rogers, *ditto and costs*
 „ Johnson v. Reynolds—Mittford v. Ditto
 Abated L.C. Jumpson v. Pitchers
 L.C.S.O. Taylor v. Earl of Harwood
 L.C. Abated Joy v. Birch
 L.C. „ Marke v. Locke
 S.O.L.C. Jenkins v. Cross
 S.O.L.C. Jennens v. Jennens, *exceptions, 2 sets*
 L.C. Costa v. Albertazzi
 L.C. Smith v. Dannah
 L.C. abated Evans v. Jones
 L.C. „ Prince v. Bird
 „ Beresford v. Bp. of Armagh, *exceptions*
 „ Parker v. Vernour
 Abated L. C. Halliday v. Best, *further directions*
 L.C. Richards v. El. Macclesfield, *exceptions*
 S.O.G.L.C. Countess Bridgewater v. Yardley
 L.C. Cobbe v. Lowe
 S.O. L.C. Mqa. Bate v. Thompson
 Michs. Tm. Dangerfield v. Evans
 L.C. Brown v. Thorpe
 L.C. Att.-Gen. v. Bosanquet
 „ Ditto v. Ditto
 Abated L.C. Coster v. Ward
 L.C. Knowlys v. Madocks
 „ Mackereth v. Dunn
 „ Phillis v. Phillips
 Michs. Tm. Ward v. Alsager
 „ Ward v. Ward
 L. C. Raxworthy v. Raxworthy
 „ Cropper v. Crooby
 V.C. Browne v. Browne, *fur. dirs. and petn.*
 Abated L.C. Crighton v. Blink—Ross v. Ross
 Abated L.C. Evans v. Williams, *further directions and costs*
 „ L.C. Baldwyn v. Rogers, *do.*
 S.O. L.C. Soares v. Gower
 L.C. Moon v. Gould
 Abated L. C. Terrington v. Pearson
 L.C. Cooper v. Durrant
 „ Edgar v. Milburn
 „ Robinson v. Addison
 „ Jones v. Curlewis
 „ Davis v. Grey—Grey v. Davis
 „ Batt v. Anns
 „ Taylor v. Thompson, *2 ca.*
 „ Watson v. Labrey
 „ Stephenson v. Bridger
 „ Cockburn v. Sherman
 „ Tullock v. Hartley, *at deft's request, 2 causes*
 „ Naylor v. Lackington
 „ Attorney General v. Haberdashers' Company
 „ Franklin v. Drake
 „ Miller v. Guardians of East-hampstead Union
 „ Northwood v. Scrase, *fur. dirs. & costs*
 „ Peyton v. Hughes, *fur. dirs. & costs*
 „ London & Greenwich Railway Company v. Goodchild, *exons.*
 „ Potts v. Pinnegar
 „ Poole v. Allen
 „ Buckell v. Hardley
 „ Trulock v. Robey
 „ Jolliffe v. Hector, *exons.*—Ditto v. Ditto, *fur. dirs.*
 „ Attorney Gen. v. Slaughter
 „ Kebell v. Philpot, *fur. dirs. & costs*
 „ Warner v. Gomme
 „ Horne v. White
 „ Bartlett v. Coleman
 „ Livesey v. Livesey, *6 causes, fur. dirs.*—Ditto v. Ditto, *6 causes, by order*
 „ Hopkinson v. Bagster, *exons.*
 „ Robinson v. Roher
 V.C. Henslowe v. Lambert—Henslowe v. Henslowe
 L.C. Broadhurst v. Balguy
 Abated Bridge v. Yates, *2 causes, fur. dirs. & costs*
 L.C. Thornton v. Hinge, *fur. dirs. & costs*
 „ Alder v. Curry
 „ Dryden v. Welford
 „ Cresswell v. Balfour
 „ Higgins v. Higgins
 „ Connop v. Hayward
 „ Morgan v. Nasmith, *fur. dirs. & petn.*
 „ Moore v. Moore, *fur. dirs. & costs*
 „ Blundell v. Gladstone, *exons.*
 „ Shuttleworth v. Greaves, *fur. dirs. & costs*
 „ Attorney Gen. v. Brandreth
 V.C. King v. Hemming, *2 causes*
 „ Jarman alias Jerman v. Jones
 „ Furnival v. Foulkes
 V.C. Mc. Tm. Wyndham (now El. of Egremont) v. Young
 V.C. Bruin v. Knott
 „ Jackson v. Miffield
 V.C. Hart v. Hart
 „ Neesom v. Clarkson
 „ Bowser v. Colby
 „ Tomlin v. Tomlin
 Abated Hashold v. Cumine
 V.C. Franklin v. Nicholl
 „ Davies v. Powell
 „ Lake v. Russell and others
 „ Bannister v. Davies
 „ Blacket v. Maude
 „ Gray v. Gray
 „ McIntosh v. Watson
 „ Craddock v. Greenway
 „ Lydall v. Dodd—Dodd v. Lydall
 „ Jones v. Smith
 „ Preston v. Kendall
 „ Pett v. Goodford
 „ Buckworth v. Dashwood
 „ Owen v. Williams
 „ Lloyd v. Wait
 „ Bennett v. Pearce
 „ Rand v. Mc Mahon
 „ Carr (pauper) v. Barker
 „ Dyball v. Bell
 „ Winkworth v. Marriott
 Irving v. Elliott
 Wilkinson v. Poppellwell, *fur. dirs. & costs*
 L.C. Richardson v. Pierson, *ditto*
 Bingham v. Hallam, *ditto*
 Avarne v. Brown, *exons.*
 Cormouls v. Mole
 Gedge v. Thorne, *fur. dirs. & costs*
 Phillips v. Hayward
 Jeffreys v. Hughes, *fur. dirs. & costs*
 Attorney General v. Hill
 Hare v. Cartridge, *fur. dirs. & costs*
 King v. Croome
 Attorney General v. Pratt, *at request of deft.*
 Hall v. Deacon, *fur. dirs. & costs*
 Ley v. Ley, *ditto, exons. & petn.*
 Harris v. Lapworth, *fur. dirs. & costs*
 Saxby v. Saxby, *fur. dirs. & petn.*
 Moses v. James
 Doo v. London & Croydon Railway Company
 Witherden v. Witherden
 Godden v. Crowhurst
 Atkins v. Hatton, *fur. dir. & cost*
 Brydges & Branfill
 Barlow v. Lord, *fur. dirs. & costs*
 Abated Bryan v. Kinder
 Lee v. Jones, *fur. dirs. & costs*
 Barrodalle v. March
 Gething v. Vigurs
 Lyse v. Kingdon
 Abraham v. Holderness
 Smith v. Stovin
 Matchitt v. Palmer
 Sutton v. Maw
 Nedby v. Nedby
 Milbank v. Stevens
 Neale v. Dell
 Griffiths v. Griffiths
 Smith v. Wilcoxon
 Ditto v. Thompson
 Walker v. Thomason
 Miller v. Gow
 Cort v. Winder
 Clark v. Wilmot
 Stubbs v. Lister
 Burridge v. Rowe
 Simon v. Topham
 Davies v. Davies
 Whibley v. Hebb
 Osborne v. Harvey
 Helsham v. Langley
 Lodge v. Nicholson
 Nash v. Elsley
 Townshend v. Fielden—Lloyd v. Ditto
 Nicklin v. Dunning
 Boulter v. Boulter
 Bastin v. Bastin
 Clayton v. Lord Nugent
 Ward v. Price
 Ryan v. Daniel
 Veitch v. Irving
 Taylor v. Clark
 Douglas v. Kierman
 Swindell v. Wright, *fur.*
 Swindell v. Swindell, *ditto*
 Duncombe v. Davies, *exceptions*
 L. C. Sawyer v. Birchmore, *fur. dirs. & costs*
 Stone v. Matthews, *exons. & ditto*
 Tylee v. Stace, *exceptions*
 Duncombe v. Davis, *ditto*

Penfold v. Giles, *ditto*
 Ewing v. Trecothick, *exceptions*
 Sharp v. Manson
 De St. Cyr v. Comrs. of Bequests
 in Ireland
 Walker v. Jefferys
 Moore v. Moore
 Frith v. Frith
 Meux v. Bell, *fur. dirs. & costs*
 Abated—Senior v. Wilks, *further*
directions and costs
 Tyrer v. Moor
 Cocks v. Edwards
 Whittaker v. Wright
 Barton v. Curlewis
 East India Co. v. Coopers Co.
 Elsom v. Hall
 Slagg v. Owen
 Fewster v. Turner
 Holt v. Horner
 Hadfield v. Cullingworth
 Thomas v. May
 Blakesley v. Whieldon
 Harrison v. Child
 Browne v. Smith
 Hodges v. Daly
 Penney v. Todd
 St. John's College, Oxford, v.
 Carter
 Dowley v. Wenfield
 Playfair v. Birmingham and Bristol
 and Thames Junction Rail-
 way Company
 Chislett v. East
 Gell v. Smith
 Lindsey v. Godmond
 Rock v. Silvester
 Thwaites v. Robinson
 Duncan v. Campbell
 Lovell v. Tomes
 Curtis v. Mason
 Allen v. Chaffers
 Page v. Hilton
 Shapland v. Shapland
 Rundell v. Lord Rivers, *assumps.*
 Rolfe v. Wilson
 Bowes v. Fernie
 Bowes v. Gibbs
 Lewis v. Lewis
 Savill v. Savill
 Morgan v. Hayward
 Ward v. Pountret, *fur. dirs. & co.*
 Hunsley v. Holder, *at deft.'s req.*
 Webb v. Clarke
 Smith v. Mackie
 Attorney Gen. v. Field
 Booth v. Lightfoot
 Willett v. Blandford
 Lloyd v. Jones, *fur. dirs. & costs*
 Barker v. Barker, *fur. dirs. & co.*
 Cole v. Hall

*Causes set down for hearing in Mi-
 chaeltmas Term, 1840.*

Carew v. Macnamara
 Salisbury v. Morrice
 Thorneycroft v. Crockett
 Hoare v. Hornby
 Johnson v. Cameron
 Scawin v. Scawin
 Alexander v. Clarke
 Jellicoe v. Price
 Stavers v. Barnard
 Brockbank v. Northgreaves
 Breeze v. English
 Haat v. Thackrah

Bevir v. Rice
 Comingham v. Earl Beauchamp
 Ditto v. Cattermale
 Smith v. Spencer
 Perkins v. Bradley
 Wood v. Lewis
 Goode v. Morgan
 Matthews v. Matthews
 Clamp v. Clarke
 Ridley v. Lashmar
 Ireland v. Cox
 Prendergast v. Tutton
 Monk v. Earl Tankerville
 Stephens v. Lord, *at deft.'s req.*
 Allright v. Giles
 St. John v. Macnamara
 Turton v. Jones
 Ibbetson v. Selwin
 Ibbetson v. Fenton
 Howell v. Tyler, *2 causes, at de-
 fendant's request*
 Ellis v. Ellis
 Grege v. Grege
 Lea v. Burton
 Lloyd v. Mason, *fur. dirs. & costs*
 Heolop v. Bank of England, *ditto*
 Salridge v. Tutton, *ditto*
 Milne v. Bartlett, *ditto*
 Richards v. Wood, *assumps. & ditto*
 Morrell v. Owen, *fur. dirs. & costs*
 Fredricks v. Wilkins, *further di-
 rections and costs*
 Culley v. Culley
 Hayward v. Hayward
 Liddell v. Granger, *2 causes, assumps.*
 Roach v. Peters, *fur. dirs. & costs*
 L.C. Bayden v. Watson, *exceptions*
and ditto
 Moody (pauper) v. Hebbard
 Gray v. Mumbray
 Williams v. Roberts
 Coulton v. Middleton, *fur. dirs.*
and equity reserved
 Coors v. Lowades
 Smith v. Farr
 Gibbs v. Gregory
 Bonnor v. Hatch
 Williams v. Moore
 Vanderplank v. King
 Graham v. Williams, *fur. dirs. & co.*
 Gardner v. Blane, *ditto*
 Morris v. Salisbury
 Buxton v. Simpson
 Hodgkinson v. Hadgkinson
 Edwards v. Howard, *fur. dirs. &
 costs*
 L. C. Heap v. Haworth, *assumps.*
 Ditto v. Ditto, *fur. dirs. & costs*
 Doubeny v. Coghan, *exceptions*
and ditto
 Davis v. Ld. Combermere, *assumps.*
 Horlock v. Smith, *ditto*

*Causes set down for hearing in
 Hilary Term, 1841*

Greene v. Warne
 Appleby v. Duke
 Clifford v. Turrell
 Cort v. Winder
 Jones v. Lewis
 Evans v. Bower
 Harman v. Grainge
 Bunney v. Frankum
 Holland v. Clark
 Fulcher v. Fulcher, *4 causes*
 Oswald v. Landles

Wegg v. Lord Petre
 Baylie v. Martin
 Bourne v. Walker
 Beckett v. Overton
 Edwards v. Hillier
 Attorney Gen. v. Elcox
 Hutchings v. Batson
 Wale v. Moores
 Sloper v. Sloper
 Tanner v. Long
 Mattallen v. Miller
 Kelly v. Hooper
 Claridge v. Dineley
 Buckett v. March
 Stephens v. Williams
 Galbreath v. Ward
 Robinson v. Robinson
 White v. Rigge
 Young v. Waterpark
 Macking v. Boyer
 Wentworth v. Tubb
 Ireland v. Cox
 Wright v. Marston
 Payue v. Bristol and Exeter Rail-
 way Company
 Simmonds v. Richardson
 Higgs v. Goldie
 Bristol v. Woods, *fur. dirs. & co.*
 Dartmouth Corporation v. Hold-
 worth
 Lade v. Trill
 Watkins v. Briggs
 Schultes v. Ward
 Simmonds v. Richardson
 Edwards v. Edwards
 Lythgoe v. Martin
 Dandridge v. Bealey
 Hobby v. Barrer
 Samuel v. Gibbs
 Rawson v. Samuel
 Midgley v. Midgley
 Coppin v. Gray
 King v. Chuek
 Boughton v. James
 Weston v. Peache
 Cogswell v. Russell, *fur. dirs. &
 costs*
 Woodman v. Madger
 Kyan v. Dunn
 Forsyth v. Chard, *fur. dirs. &
 costs*
 Knapp v. Harper
 Fry v. Wood
 Fanning v. Devereux
 Chafey v. Serjeant
 Dobree v. Schroder, *exceptions*
 Keen v. Birch, *fur. dirs. & costs*
 Vickers v. Hardwick
 Medley v. Eaton
 Hall v. Rawdon
 Murray v. Montgomery
 Ditto v. Murray

*Causes set down for hearing in
 Easter Term, 1841.*

Ashton v. Trotter
 Scarborough v. Sherman
 Davis v. Chanter
 Forbes v. Peacock
 Capel v. Hughes
 Allen v. Cornfield
 Oswaldiston v. Simpson
 Fitzpatrick v. Newton
 Cogger v. Wickes
 King v. Green
 Hostache v. Rogers
 Lyddon v. Woolcock
 Henfrey v. Hermon

Fginton v. Burton
 Stocken v. Chuck
 Pallen v. Haversfield
 Cash v. Belsber
 Williams v. Ellis
 Ranger v. Great Western Railway
 May 28—Perkin v. Stafford
 Wright v. Rutter
 Aspinall v. Andus
 Morgan v. Elstob
 Jackson v. Botcher
 Davies v. Jones
 Harrison v. Lane
 Body v. Lefevre
 Stone v. Matthews
 Hooker v. Brettal
 Hopson v. Croome
 Parry v. Jebb
 Barker v. Wyke
 Cook v. Black
 Davies v. Thorne
 Middleditch v. Saundess
 Holgaon v. Lowther
 Loutour v. Holcombe
 May v. Selby
 Wamey v. Towgood
 Manby v. Westmacott
 Attorney Gen. v. Milner
 Robertson v. Dean
 Edgar v. Fry
 Evans v. James
 Youde v. Jones
 Alexander v. Foster, *ditto*
 Elliott v. Elliott, *fur. dirs. & costs*
 Powell v. Powell, *ditto*
 Fye v. Linwood, *ditto*
 Campbell v. Campbell, *exceptions*
 Ditto v. Ditto, *fur. dirs. & costs*
 Bratt v. Smith, *ditto*
 Hill v. Smith, *ditto*
 Noel v. Hoare, *ditto*
 Short—Grant v. Blatherwick—
 Ditto v. Bunce, *ditto*
 Kirkwall v. Flight, *exceptions*

Christian v. Chambers, *fur. dirs. and costs*
 Ibbotson v. Ibbotson, *ditto*
 Griffin v. Williams
 Rowmer v. Parkinson
 Phillips v. Barlow
 Wheeler v. Cottrell
 Barber v. Cockerell, *at request of def.*
 Ford v. Clough, *fur. dirs. and co.*
 Sort—Reed v. Baillie, *ditto*
 Short—Gurney v. Gosway, *ditto*
 Watts v. Sherwood
 Milner v. Singleton, *fur. dirs. and costs*
 Eades v. Harris
 Bennett v. Risley, *fur. dirs. & co.*
 Cooper v. Emery, *exams.*
 Pirth v. Chorley, *fur. dirs. and co.*
 Reynolds v. Milroy
 Milroy v. Mitroy
 Kirkwall v. Flight, *fur. dirs. and costs*
 Price v. Harding, *ditto*
 Shee v. Cordell
 Jenkins v. Cooke
 Sharmah v. Heath—Howe v.
 Ditto, *fur. dirs. and costs*
 Reay v. Lovejoy, *ditto*
 Charnock v. Charnock
 Acklom v. Astley, *fur. dirs. and co.*
 Preedy v. Baker
 Harvey, Kut. v. Harvey, *fur. dirs. and costs*
 Trevena v. Trevena, *ditto*
 Ridewood v. Lockyer, *ditto*
 Smith v. Baker, *exams. to rept.*
 Beevor v. Elliott, *fur. dirs. and co.*
Causes set down for hearing in Trinity Term, 1841.
 Massey v. Day
 Eld v. Durant
 Mayor and Corporation of Carnarvon v. Evans

Stephenson v. Everett
 Barfoot v. Buckland
 Pigott v. Jeaffrson
 Ashburner v. Gawthrop
 Moorhouse v. Colvin
 Barfield v. Rogers
 Allen v. Wadley
 Burton v. Manson
 Farmer v. Farmer
 Meigh v. Baker
 Pirth v. Nicholson
 Brown v. Edwards
 Langford v. Reeves
 Collins v. James
 Crutchley v. Crutchley
 Grett v. Patching
 Stiven v. Jenkins
 Dyson v. Morris
 Lake v. Bartholomew
 Latimer v. Bennett
 Compton v. Storey
 Fretts v. Hall
 Buuteel v. Lord Abinger
 Attorney Gen. v. Mayor and Corporation of Newark
 Ranger v. Stapley
 Fairfax v. Morrell
 Roberts v. Corporation of Carnarvon
 Mann v. Mills
 Roberson v. Cheetham
 Vicars v. Oliver
 Wright v. Lockwood
 Musgrave v. Mitchell
 Trevanion v. Sargen
 Baker v. Atkinson
 Ridgway v. Gray
 Webster v. Harwood
 Moor v. Raisbeck
 Vicq v. Le Bailey
 May 28—Evetts v. Tawney
 Powell v. Woollam
 Thomas v. Lock
 Beavan v. Beams

Rolls.

	Plea and Demurers.	Causes.	Further Directions and Costs.	Further Directions and Exceptions.	Exceptions.	Total.
Standing in the printed Book for Hearing at the commencement of Easter Term, 1841	2	90	37	1	9	139
Matters set down after the Printing of the Book for Easter Term and up to the Close of the Sittings (1841)	0	34	17	0	1	52
Matters in Consent Book	0	0	0	0	0	0
Total	2	124	54	1	10	191
Heard and disposed of, or removed from the General Paper :—						
As Short Causes	0	10	9	0	1	19
In the Regular Paper	0	15	10	1	3	29
Struck out, as Abated, or Compromised, or for some other reason	2	26	6	0	3	37
In Consent Paper	0	0	0	0	0	0
Total	2	51	25	1	6	85
Balance undisposed of as above	0	73	29	0	4	106
Matters adjourned at the Request of Parties as their regular time for Hearing arrived	0	21	5	0	3	29
Total now for Hearing	0	94	34	0	7	135

Judgments.

Withy v. Mangles, 2 causes, *fur. dis. & costs*
 Att. Gen. v. Master of Dulwich College
 Minchin v. Nance—Meyrick v. Ditto, 2 causes—
fur. dis. & costs.
 Page v. Adam
 Sanders v. Benson
 Frampton v. Frampton
 Labertouche v. Hodgkinson

Matters which, in regular turn, would have been heard on a former day; but which have been adjourned at the request of Parties till after the First Day of Causes in Trinity Term.
 Att. Gen. v. South Sea Company—*adj.* 1st Cause day after Term
 Gibbs v. Bowes—to come on with supplemental cause
 Western v. Williams—*fur. dis. & costs—ad.* Michaelmas Term
 Lane v. Hardwicke—*adj.* Michaelmas Term
 Att. Gen. v. Bayly—*adj.* 1st Cause day after Term
 Wilson v. Mead—*adj.* Michaelmas Term
 Artis v. Artis—*adj.* Michaelmas Term
 Shalcross v. Wright—*adj.* Michaelmas Term
 Townley v. Deare—*adj.* Michaelmas Term
 Pidsley v. Mann—Ditto v. Strugis—*fur. dis. & costs—to file supplemental bill*
 Davies v. Coleman—*fur. dis. & costs—adj.* Michaelmas Term
 Ellis v. Griffiths—Ditto v. Carns—*adj.* till after Report made
 Cothurn v. West, *exceptions—adj.* Michaelmas Term
 Prior v. Sproule—*fur. dis. & costs—adj.* 1st Cause day after Term
 Hardern v. Thornicroft—to amend Bill
 First day of Term—*Motions.*

Matters which, in regular turn, would have been heard on a former day; but which have been adjourned at request of Parties till the First day of Causes in Trinity Term.
 Att. Gen. v. Brettingham, *part heard*
 Woodcock v. Renneck—Ditto v. Blissett—Ditto v. Sampson—*fur. dis. & costs, part heard*
 Addis v. Campbell, *part heard*
 Suckermore v. Dimes
 Shepherd v. Morris
 Morris v. Shepherd
 Syng v. Giles
 Evans v. John
 Cook v. Fryer
 Eade v. Blake—Ditto v. Collins—Ditto v. Eade 2 Causes—Ditto v. Harland—Ditto v. Blake—Ditto v. Reynolds, *exceptions*
 Bovill v. Cordery
 Wild v. Hardy
 Millar v. Craig
 Penfold v. Giles—Ditto v. Penfold—Ditto v. Giles, *exceptions*
 Mayor, Aldermen, and Burgesses of the borough of Arundel v. Holmes—Holmes v. Mayor, &c. of Arundell—(May 24) *
 James v. James

Undisposed of Matters in the printed Book for last Term, whose turn for hearing had not arrived at the close of last Sittings.
 Mutch v. Castle—(Jan. 13)
 Boyd v. Fergusson—(Jan. 13)
 Ward v. Shepherd—(Jan. 14)
 Lincoln v. Wright—(Jan. 14)
 Bayley v. Sherwood—(Jan. 14)
 Lumsden v. Morison—(Jan. 14)

* The dates within parenthesis indicate the days when subpoena notes returnable.

Wood v. Richardson—(Jan. 14)
 Hobson v. Shearwood—(Jan. 15)
 Lord v. Whitworth—(Jan. 15)
 Stubbs v. Molineux—(Jan. 15)
 Perry v. Knott—(Jan. 15)
 Warwick v. Richardson—Clarke v. Sewell, *exceptions—set down Jan. 9.*
 Hodge v. Rexworthy—Ditto v. Hodge, *fur. dis. & costs—(Jan. 14)*
 Hatton v. Finch—(Jan. 20)
 Att. Gen. v. Drapers' Company—Ditto v. Clormes Charity—(Feb. 20)
 Att. Gen. v. Christ's Hospital, Abingdon—(Feb. 20)
 Perry v. Meadowcroft—Ditto v. Lester—Meadowcroft v. Meadowcroft—Lester v. Few—Meadowcroft v. Ditto—Ditto v. Lester—Perry v. Tristram—Ditto v. Meadowcroft, *fur. dis. & costs & petition—set down Jan. 28*
 Towne v. Horne—Ditto v. Carter, *fur. dis. & costs, set down Jan. 28*
 Marks v. Marks, *fur. dis. & costs—set down Feb. 3*
 Harvey v. Harvey—(Feb. 23)
 Brodie v. Barry, 2 causes—Ditto v. Symons, 3 causes—Anderson v. Ditto, *fur. dis. & costs—set down Feb. 5*
 Ravens v. Tayler—Ditto v. Henrick, *fur. dis. & costs—set down Feb. 6*
 Hatfield v. Pryme
 Richardson v. Richardson—(April 15)
 Hedges v. Brick—set down Feb. 8
 Davenport v. Bishop—(March 1)
 Beaumont v. Winter—Ditto v. Elam—Ditto v. Farrar, *fur. dis. & costs—set down Feb. 12*
 Hurrey v. Handley—Ditto v. Ewerson—*fur. dis. & costs & petition—set down Feb. 13*
 Edwards v. Edwards, *fur. dis. & costs—set down Feb. 13*
 Goodall v. Bayley, *fur. dis. & costs—set down Feb. 22.*
 Willis v. Plasket, *fur. dis. & costs—set down Feb. 23*
 James v. Bydder—(March 15)
 Barber v. Swann—Buddle v. Ditto—set down Feb. 27
 Robinson v. Hunt—Scott v. Eglenton—Ditto v. Sturgis, *fur. dis. & costs—set down March 1*
 Pullam v. Manning—Ditto v. Rawlins, *fur. dis. & costs & petition—set down March 2 (short)*
 Att. Gen. v. Prettyman, Meer Hospital—set down March 11
 Wilson v. Cluer, *fur. dis. & costs—set down March 12*
 Tullett v. Armstrong, *exceptions—set down March 13.*
 King v. Hammett, *fur. dis. & costs—set down March 16*
 Townsend v. Westacott, *fur. dis. & costs—set down March 17*
 Pasquier v. Pasquier, *fur. dis. & costs—set down March 22*
 Clarkson v. Stanes—Dudderidge v. Groom—*fur. dis. & costs—set down April 1*
 Chennell v. Martin, *exceptions—(April 3)*
 Att. Gen. v. Rogers—(April 15)
 Evans v. Thomas—(April 15)
 Jackson v. Jackson—(April 15)
 Att. Gen. v. Corporation of Newcastle-upon-Tyne, (April 15)
 Att. Gen. v. Mayor, &c., of Newark—(April 17)
 Maugham v. West—(April 17)
 Butcher v. Musgrave—(April 17)
 Margerison v. Robinson—(April 17)
 Thompson v. Johnson—(April 17)
 Lambert v. Lambert—(April 19)
 Baker v. Bayldon—(April 19)
 Wyatt v. Sharratt—(April 19)

Rutter v. Mariott—(April 19)
 Webb v. Taylor—(April 19)
 Norburne v. Ollett—(April 20)
 Morrall v. Lutton—(April 20)
 Sheffield Canal Comp. v. Sheffield and Rotherham
 Railway Company—(April 20)
 Tanner v. Elworthy—(April 20)
 Relfe v. Nursey—(April 21)
 Willatts v. Busby—(April 21)
 Bryan v. O'Neill—(April 21)
 Westera v. Gregory—(April 23)
 Whitehead v. Waring—(April 23)
 Whitehead v. Waring—(April 23)

*Undisposed of Matters set down since the Printing of
 the Book for last Term and up to the present time
 (10th May, 1841)*

Whiting v. Whiting, *fur. dirs. & costs*—(April 19)
 Mackinnon v. Sharp—Ditto v. Mackinnon—*fur.
 dirs. & costs*—(April 20)
 Jordaine v. Gray—*fur. dirs. & costs*—(April 21)
 First Cause Day—Attorney Gen. v. Kerr—Ditto v.
 Wales, *re-hearing*—(April 28)
 Pinkney v. Raine—Ditto v. Ditto—*fur. dirs. &
 costs*—(April 26)
 Knight v. Gosling, *fur. dirs. & costs*—(April 26)
 Allen v. Aldridge, *fur. dirs. & costs*—(May 1)
 Doungsworth v. Hodgkinson, *fur. dirs. & costs*—
 (May 3)
 Warren v. Buck—Ditto v. Ditto, *fur. dirs. & costs*—
 (May 5)
 Brampton v. Yorke—Ditto v. Ditto—*fur. dirs. &
 costs*—(May 8)
 Hinde v. Blake—(May 8)
 Coleman v. Phippe—(May 8)
 Nelthorpe v. Wright, *fur. dirs. & costs*—(May 10)
 Lewis v. Davies, *exceptions*—(May 10)
 Green v. Green, *fur. dirs. & costs*—(May 10)
 Alington v. Pain—set down May 25
 Martin v. Collins—set down May 25
 Lacy v. Allen—set down May 25
 Hemmingson v. Gylby—set down May 25
 Dorrien v. Livingstone—set down May 25
 Mourilyan v. Robison—set down May 25
 Cluna v. Crofts—set down May 26
 Rutter v. Edden—set down May 26
 Cochill v. Bridgman—set down May 26
 Wontworth v. Williams—set down May 26
 Lythgoe v. Watson—set down May 26
 Turner v. Corney—set down May 26
 Evans v. Salt—set down May 27
 Elworthy v. Tanner—set down May 27
 Farr v. Sheriffe—set down May 27
 Langton v. Horton—set down May 27
 Wright v. Maunder—set down May 27
 Wade v. Hopkinson—set down May 27
 Thompson v. Edgar—set down May 28
 Waters v. Anderson—set down May 28
 Ashton v. M'Dougall—set down May 28
 Beaman v. Dod—set down May 28
 Maitland v. Hankey—set down May 28
 Connell v. Connell—set down June 1

Common Pleas.

REMANET PAPER of Trinity Term.

Enlarged Rules.

Parry v. Betts—to 1st day
 Cribb v. Fenn—to 2d day
 Samuel v. Rawson and another—ditto
 Trulove v. Whitechurch and others—ditto
 Kirk v. Fryer—to 4th day
 Doe d. Scott and others v. Bird—to 5th day
 In re Inman—enlarged generally.

NEW TRIALS of Easter Term, 1840.

Middlesex—Crane v. Price and others.

NEW TRIALS of Michaelmas Term last.

Middlesex—Deverell v. Whitmarsh
 London—Collyer v. Stennett
 „ Moxhay v. Coleman
 Derby—Wood v. Morewood
 Liverpool—Branker and anor., assignee v. Moly-
 neux
 Bristol—Lott and anor. v. Melville and ors.
 Surrey—Punter v. Lord Grantley
 „ Horne v. Wingfield
 Herts—Gibson and anor. v. Muskett
 Kent—Milgate v. Kebble
 Cambridge—Ivatt v. Mann

NEW TRIALS of Hilary Term last.

Middlesex—Smith v. Monypenny
 „ Hall v. Ball
 London—Evans and anor. v. Nichol and anor.
 „ Heenan v. Evans and anor.
 „ Green and anor. v. Gooden
 „ Steigenberger v. Carr
 „ Deraux v. Hill
 „ Bell, public officer, v. Gunn
 „ Alexander and anor. v. Burchfield
 „ Allen v. Stevens

NEW TRIALS of Easter Term last.

Middlesex—Sweet v. Lee
 „ Hodge and ors. v. Cooper
 „ Miller v. Thomson
 „ Walton v. Potter
 „ Goss and anor. assignee v. Quinton
 „ Filbey v. Lawford
 „ Perry v. Watts
 „ Colyer v. Guyon
 „ Saine v. Same
 „ Stewart v. Steele
 Wilts—Doe d. Duke of Beauford and ors. v.
 Neeld Esq.
 Devon—Veale v. Coward
 Cornwall—Niblett and ux. v. Harry
 York—Beckett and ors. v. Wilson
 Liverpool—Barned and others v. Hamilton
 Surry—Curling v. Evans and anor.
 „ Ross v. Norris
 „ Doe v. Edwards and ors. v. Leach
 Kent—Weld v. Ward, clerk
 „ Shoobridge v. Same
 Salop—Walmsley v. Matthews

Cur. ad. vult.

Bonzi v. Stewart.
 Same v. Same
 Wollaston and ors. v. Hakewell
 Morris and another v. Stamp
 Greathead v. Morley
 Bartholomew v. Carter
 Bethell v. Blencowe
 Morrell v. Martin
 Howard v. Smith
 Amor v. Cuthbert
 Douglas v. Chalk and anor.
 Thompson v. Jackson and anor.
 Lane and ors. v. Burghart
 Shepherd v. Pybus
 Bradley v. Carr and ors.

DEMURRER PAPER of Trinity Term.

Saturday, 22 May
 Monday, 24 May } Motions in arrest of iudic.
 Tuesday, 25 May } ment
 Wednesday, 26 May }

Same day, Special Arguments.

Rahu v. Hatfield
 Gilbert and ors. v. Dyneley
 Holmes v. Bell
 Peppercorn and anor. v. Peacock
 Rider, assignee v. Edwards

Pontifex v. Bignold
 Knight and ora. v. Selby
 Powell v. Ansell
 Hunter v. Neck
 Dempster and anor. v. Purnell
 Doe d. (Parker) v. Thomas
 Dunn v. Di Nuovo
 Archbishop Canterbury v. Hawkins, sued with ora.
 Leadenbury v. Evans
 Wollaston v. Holt
 Raymond v. Fyfe
 Willis v. Johnson, jr. and others.

Thursday, 27th May.

Friday 28th—*Special Arguments.*

Keat and anor., sec. &c. v. Sweeting
 Cannan and others, asses v. Reid
 Graham and others v. Fretwell and anor.
 Gannt v. Taylor
 Matthews v. Biddulph, Esq.

Saturday, 29th May

Monday, 31st

Tuesday, 1st June

Wednesday, 2nd—*Special Arguments.*

Thursday, 3rd

Friday, 4th —*Special Arguments.*

Saturday, 5th

Monday, 7th

Tuesday, 8th

Wednesday, 9th

Thursday, 10th

Friday, 11th

Saturday, 12th, End of Term.

Queen's Bench.

Monday, 24th May, 1841.

The Court will on Tuesday, the 1st of June, (and on that day only this Term) take the Special Paper, and on the other days usually appropriated to that paper, NEW TRIALS:—The CROWN PAPER on the usual days; and on every open day, MOTIONS and NEW TRIALS.

NEW RULE OF COURT.

Trinity Term, 4 Victoria, 1841.

It is ordered that where judgment is signed by virtue of a Judge's certificate, given pursuant to the Act 1 William 4th, c. 7, s. 2, such judgment may be signed without any rule for judgment.

By the Court.

LAW BILLS IN PARLIAMENT.

House of Lords.

For holding Petty Sessions and Summary Trials.

[In Committee.] Earl Devon.

To limit the Criminal Jurisdiction of the Quarter Sessions.

[For 2d reading.]

Tithes Recovery.

[For 2d reading.]

Double Costs, &c.

[For 2d reading.]

To amend the Law of Principal and Factor.

House of Commons.

For facilitating the administration of justice (in Chancery), No. 1. Attorney General.

[For 3d reading.]

To facilitate the Administration of Justice in the House of Lords and Privy Council, No. 2.

Sir E. Sugden.

[In Committee.]

County Courts.

Mr. F. Maule.

[To consider Report 7th June.]

Bankruptcy, Insolvency, and Lunacy.

[In Committee.]

To remove objections to the admission of evidence on the ground of interest.

[In Committee.]

Mr. C. Butler.

To allow Writs of Error in *Mandamus*.

Sir F. Pollock.

Poor Law Amendment.

[In Committee.]

For the Registration of Parliamentary Electors.

[In Committee.]

Lord John Russell.

For the better regulation of Railways.

Mr. Labouchere.

County Coroners' Election.

Mr. Packington.

[In Committee.]

Drainage of Lands.

Mr. Handley.

[In Committee.]

Copyhold and Customary Tenures.

[For 3d reading.]

Mr. Hope.

Administration of Justice in Boroughs.

[In Committee.]

Attorney General.

To facilitate the Transfer of Real and Personal Property held in trust for Charitable Purposes.

Mr. James Stewart.

[For 3d Reading.]

Designs Copyright.

[For 2d reading.]

To appoint a Public Prosecutor.

[For Select Committee]

Mr. Ewart.

To exempt Tithes from Parochial Assessments.

Mr. Hodges.

Middlesex Sessions.

[In Committee.]

County Bridges.

[In Committee.]

Punishment for Offences against the Person.

[In Committee]

Lord J. Russell.

Punishment for Embezzlement.

[For 2d reading.]

Lord J. Russell.

To amend the Law of Sewers.

[To be reported.]

Enrolment of Burgesses.

[In Committee.]

Turnpike Acts Amendment.

[In Committee.]

Stamp Duties on Law Proceedings.

[To be reported.]

Costs in frivolous Suits.

[For 2d Reading.]

THE EDITOR'S LETTER BOX.

We have received some letters relating to the ensuing Examination, and particularly expressing a hope that the difficulty of the examination will not be increased, on account of the prejudice the candidates will suffer, if not passed before the Long Vacation. We apprehend no difference can be made in this respect.

Several letters are unavoidably deferred.

We have heard of no such report as that mentioned by "Fair-play," and do not believe it.

A correspondent at Plymouth is informed that the attorney to whom he was articulated, must join in the assignment. The premium is matter of agreement.

The Legal Observer.

MONTHLY RECORD FOR MAY, 1841.

— "Quod magis ad Nos
Pertinet, et nescire malum est, agitamus."

HORAT.

DEBATES IN PARLIAMENT RELATING TO THE LAW.

NEW JUDGES IN EQUITY.

The following is extracted from the report of the debate on the 23rd April, in the House of Commons, on the bill for the better Administration of Justice in Equity.

On the 19th clause, which relates to the appointment of two new Vice Chancellors, being read,—

The *Attorney General* rose to move that the blank left in the number of new judges to be appointed in Chancery be filled up with the word "two." This part of the subject had already been the subject of much deliberation in the other house. In the bill brought in last year the same number was proposed, and the proposal met with the approbation of the Lord Chancellor, Lord Langdale and others. Lord Brougham, it was true, objected. The witnesses who were examined on the point were unanimous in the opinion that two judges were necessary. The first judge examined was the Vice Chancellor, and he gave a very strong opinion as to the immediate necessity for the appointment. He was of opinion that two would be hardly sufficient, and when asked if he did not think that one would be enough, answered, "Certainly not." He said that two might be sufficient at first. The reason why the arrears appeared so small was because the Lord Chancellor had gone into a great many, and because a great many had been struck out, because the parties were not prepared. It had been suggested, that the arrears once subdued, one judge would be sufficient; but he believed that such an increase of business would find its way into the Courts as to make it necessary to retain both. At present it was matter of complaint that unless the sum sought to be recovered amounted to 1,000*l.*, it was no use to seek for justice in a Court of Equity. Now, it was his belief, that

by the regulations now in contemplation, such expedition would be introduced into those courts as utterly to do away with the reproach. The Vice Chancellor had recorded his opinion that, although two judges might be enough at present, it would before long become necessary to increase their number. He would most respectfully submit to the committee the expediency of adhering to the bill sent down to them from the Lords in the last session of Parliament.

Sir *E. Sugden* thought it most impolitic, unless under circumstances of the very greatest necessity, to create two new courts of justice. The opening of two new courts would create such a rush of barristers and attorneys into them, that he feared much of the business of those courts would not be done in a manner creditable to the administration of justice. The learned *Attorney General* said he would give power to the Lord Chancellor to alter the practice in the Master's office, and that the alterations would be satisfactory. He (Sir *E. Sugden*) should, however, like to know what those alterations were before he sanctioned the creation, not merely of two new judges, but two new courts, whereby they would have five separate courts of equity sitting concurrently, while there were but three Common Law Courts. He had already on former occasions shown to the House the state of the appellate jurisdiction, both in the House of Lords and Court of Review, and, taking that jurisdiction altogether, it was a great reproach to the country that it should have been so long allowed to remain in its present state. But what would the consequence be of creating two more courts? Why, that they would have four judges, not only of co-ordinate, but of subordinate jurisdiction; sitting at the same time; and it was utterly impossible to suppose that those judges would not be deciding different ways upon different questions of law. It would consequently require great pains and great length of time to keep right the law of England with so many different judges adjudicating in those different courts. The Lord

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Chancellor had already more than he could do; and yet either he must hear all the appeals from these courts, which of itself would suffice to occupy the whole of his time, or they must be brought to the House of Lords. Then, if they happened to have a Master of the Rolls superior in legal knowledge and experience to the Lord Chancellor, they might find the opinions of the better man overruled by one less versed in the law, and less approved of by the profession. If they went to the House of Lords to decide between the two, they still had but the self same man who decided in the court below against a court of inferior jurisdiction. He had before shown that there was no necessity for those two additional courts. The Vice Chancellor, he believed, was of opinion that one additional judge in the Court of Chancery would be quite sufficient. Even if two could be proved requisite, why create them both at once? The appointment of a new court of justice was a great and serious alteration. He saw no reason, therefore, why, even admitting the necessity of two courts to exist, they should not postpone the appointment of the second until they saw how the first would operate co-ordinately with the three already in existence. For his part, he firmly believed that the creation of those two courts at the same time would lead to an incalculable amount of mischief. It was provided by this bill, that upon the demise of the first judge the office should be filled up, but not upon the demise of the second. It must be observed, however, that then they would have brought into practice an additional number of barristers and solicitors to meet the demand of that court. What was to become of those gentlemen? What was to be their employment? These were questions which led him to believe that plenty of reasons would be found and strongly advanced for continuing that second court; for he was of opinion, that whatever number of courts they created, the business to be done would accommodate itself to that number, however well it might be done with less. The right honourable gentleman concluded by moving that the blank be filled up with "one" instead of "two."

Mr. Lynch was of opinion, that suitors without courts was a much greater evil than courts without suitors, and was the particular evil which now pressed upon the public, and which it was now sought to remedy by the creation of two new courts. Without this assistance it was quite impossible that the Vice Chancellor and Master of the Rolls could get through the enormous heap of business that was now before them; and, looking at the nature and amount of that business, he had no hesitation in saying, that less than two new courts would be insufficient. His right honourable and learned friend said, that there were now only three courts of common law, and why, therefore, was it necessary to appoint two new equity judges? Why, his right honourable and learned friend forgot that now besides the three courts of common law, there was the Bail Court, and a separate judge of

each court almost sitting daily at *Nisi Prius*, so that there were fifteen common law judges constantly employed, at an expense of 75,000*l.* per annum, and why should any objection be made to the establishment of five equity judges at an expense of 24,000*l.* per annum, when it should be remembered that in the Chancery Courts more real and substantial business was done than in all the other courts put together? This measure would put an end to all the mischiefs and delays which now existed in the administration of justice in the Court of Equity, and he therefore trusted that the clause as proposed would be agreed to.

Mr. Pemberton said, that though he thought the house and the country were much indebted to his right honourable and learned friend (Sir E. Sugden) for having brought the matter so fully under their consideration; still he (Mr. Pemberton) was not prepared to give his assent to all the propositions which had been urged by his right honourable and learned friend. It was, however, only in deference to the evidence which had been given on this subject before the select committee of the House of Lords—in deference also to the opinions held by those learned persons of all political parties who had held judicial offices—in deference also to the opinions expressed by those members of the profession who were better judges than himself of the extent of the impossibility of obtaining justice in the courts of equity as at present constituted—opinions expressed in a petition signed by between 60 and 70 of the principal firms in London—he did not feel prepared to oppose the proposition of her Majesty's government, made on their responsibility, and after a consideration of the evidence which had been adduced on this subject. When he said this he must at the same time state that he thought the country had great reason to complain of the mode in which this measure was now brought before the legislature. When a bill precisely similar to the present was brought down from the House of Lords at the close of last session, the noble lord opposite (Lord J. Russell) postponed the consideration of that measure, because he told the House and the country that there was not then sufficient time to consider a bill of such deep importance. The noble lord also stated that this change was connected with many others that were in the contemplation of the government, and which would have a material bearing upon the particular measure now under consideration; and the noble lord told the house and the country, in language stronger than he (Mr. Pemberton) should like to make use of, that the mode in which the business of the Judicial Committee of the Privy Council was administered was a discredit, not to say a disgrace, to the country. The noble lord on that occasion also agreed that the Court of Review was another establishment which of necessity must undergo investigation. That court, it was true, had been allowed to dwindle down from four judges to one judge, and he was sure that it would meet with universal approbation if that court were wholly abolished,

and the solitary judge that was left, appointed to some other office for which his learning and acquirements fitted him. The amendment or improvement of the supreme court of appeal, the House of Lords, was also a matter closely connected with the subject now under consideration, and yet of this the noble lord was now silent. If the Court of Review was to be abolished, surely this bill ought to provide for adding its jurisdiction to the new judge in equity to be appointed under this bill, and thus, if there was any deficiency of business for the new court, this arrangement would furnish a supply. But he asked, was it fair on the part of the government towards the country, when bringing this isolated measure forward, not to tell the House what were their views on these important subjects? Was it right, after the first minister of the Crown in that House had pronounced such a sentence upon one of the most important as a tribunal of justice, as that it was a discredit, if not a disgrace, to the country, that the House and the country were now unable to learn from the noble lord, or from the law officers of the Crown, whether it was intended to make any alterations in that Court, and if so, what those alterations would be? With respect to the particular question now before the committee, considering as he did the absence of even more important topics, he would state very shortly the reasons which induced him, in deference to the evidence which had been given, and to the facts and documents now upon the table, not to oppose the proposition which had been made by his honourable and learned friend the Attorney General. Look at the evidence which had been adduced before the committee of the House of Lords. Some of the leading members of the profession had there been subjected to a strict cross-examination by some noble and learned lords who sat upon that committee. The effect, however, of that evidence went to prove that the average arrear of causes in the Court of Chancery was between 600 and 700. In the Vice Chancellor's Court a period of from two to three years must elapse between the time at which a cause was set down for hearing and the time at which it would be heard, and that in the ordinary course of business some causes came on twice, and sometimes oftener, for hearing. Now he believed that his right honourable and learned friend was right when he said that these delays not unfrequently led to compromises; but still, if 24,000*l.* per annum would enable justice to be administered without delay, it seemed to him (Mr. Pemberton) that the expenses of two additional judges would be compensated by the relief from delay which would thus be given to suitors. Such then had been the evidence which had been produced from all quarters to satisfy those who were but little disposed to be satisfied, but who finally arrived at that conclusion. Had anything since happened to alter that determination, and what was in point of fact the real state of business at present? The total number of causes in a state for hearing in the Rolls Court, was 139. Undoubtedly this

was an arrear, but nothing of an arrear compared with what they were accustomed to see, not only in the Court of Chancery, but even in the courts of law. But still that was not a satisfactory position of affairs. The cause, for instance, which had been heard to day, was set down for hearing so long ago as the month of July last. And during these long delays, look at the accidents by which the hearing of a cause might be still further postponed. Suppose twenty parties to a suit, and one of those parties, unhappily for the rest, should happen to die in the meantime. Why, in that case, a new suit would be superadded, because the old original suit was rendered defective by the death, and although eight or nine months might not be long to wait for the recovery of a demand, yet a further extension of delay became a grievance and a hardship upon the suitors, from which he for one should be glad to see them relieved. He thought it was desirable that the state of business in each court should be such that when they rose for the vacation no suitor who was ready for a hearing should remain unredressed. But if this was the state of things in the Rolls' Court, what was it in the Vice Chancellor's Court? His honourable and learned friend the member for Galway (Mr. Lynch) had underrated the number of cases in arrear in that court. He (Mr. Pemberton) presumed that his honourable and learned friend excluded from his calculation causes which were abated; but the number of causes set down in the book he (Mr. Pemberton) held in his hand was 619. Now what was the progress made in hearing causes, as shown by the returns which had been obtained by his right honourable and learned friend (Sir E. Sugden)? The progress made in disposing of causes in the general paper last year was 173, excluding all short causes. Now there was on the roll of the Vice-Chancellor's Court 619 causes set down, and disposing of them at 173 or 200 causes each year, from two to three years must elapse before they were all heard. He felt very sensibly the inconveniences of such a system of delay, and he trusted they would be obviated by the appointment of two new judges. If he did not anticipate an increase of business by this addition he should be ready to join with his right honourable and learned friend in the objection to a multiplication of courts, which might be unnecessary. There was one point in this bill of which he highly approved, he alluded to the provision for enabling the Lord Chancellor to make rules and regulations for the improvement of the practice of the Court of Chancery. He (Mr. Pemberton) was well aware that several members of the bar of opposite politics had most honourably devoted themselves to that subject, and were now and had been for months engaged in considering alterations and framing regulations and rules which might be introduced into the practice of the court, and be productive of the greatest possible benefit to the suitors, and induce a great influx of business, by not only removing the delays in the hearing a cause, but the delay

in the final prosecution of a suit in the Masters' office. In this state of things, he thought that when the Government took upon itself to have two new judges appointed, when they were backed by all the authorities as derived from the witnesses who had been examined, and though he felt forcibly some of his right honourable friend's objections, still, on the whole he (Mr. Pemberton) was not inclined to oppose the proposition of the honourable and learned gentleman opposite.

The word "two" was then inserted, and the clause as amended was agreed to.

ALLEGED UNEQUAL SENTENCES OF THE JUDGES.

Lord *Denman*, on Monday, the 29th March, on presenting a petition to the House of Lords, took occasion to repel certain charges which had been made respecting his conduct in the administration of justice. We think his Lordship's vindication of himself, and of Mr. Justice *Erskine* and Mr. Justice *Patteson*, should be recorded in this journal: we therefore state it fully.

As the honourable seat which he held in their Lordships' House was solely owing to the situation which he filled in a court of justice, it might be reasonably expected, that, as a member of their Lordships' House, he should be called on to explain certain circumstances which had been brought forward in high places, and by persons of great authority, as they affected him personally. But when he found stated, as a strong reason for the adoption of a particular legislative measure, alleged scandalous conduct on the part of the first criminal judge in the country, which, if well-founded, would most properly expose him to very severe censure, he thought that he owed it to himself, to their Lordships, and to the administration of justice, having a clear answer to the charge, to state what that answer was.

The circumstances were these:—A case came before him for trial at the last *nihi prius* sittings for Middlesex; and it was asserted that he, for the base purpose of screening some defendants, who happened to be of high rank and station,—one of them a member of their Lordships' House,—had prevented the proceedings to which he alluded from coming to an end, and hindered them from going further, by suggesting that compensation should be granted to the injured party, instead of making that public example which the justice of the case called for. He should have thought that, without strong and clear evidence of the fact, the whole history of his life would have afforded a sufficient refutation of a charge of that nature. But it was stated in such a confident manner, with such perseverance, and on such authority, that he felt it necessary to

notice it, not so much for the purpose of explanation, as with a view to making a mere statement of the truth—because that statement alone would, in his opinion, make an end of every imputation that was cast on him, even in the minds of those who, without authority and without justice, had made that imputation. On the day in question, a case was brought before him in which Lord *Waldgrave* and another gentleman were charged with having committed an assault on a policeman; and it was said that he (Lord *Denman*) had directed the parties to enter into a compromise, and had suggested that course for the purpose of putting an end to proceedings in that way. Now, in the first place, he had given no such direction—he had no power to give any such direction. The proceedings had not been stopped—the proceedings were now actually going on, and would, in the ordinary course of practice, be brought before the Court of Queen's Bench next term. That fact was now discovered to be true, and it at once got rid of a great portion of the charge brought against him, because he believed that the storm of indignation that was raised against him proceeded on the supposition that he had the power to stop the trial, and that he had done so. On the contrary, it was before the court in the manner which he had stated, to be dealt with according to law. The case would come before the Queen's Bench in the next term, as he had said. But then it was stated, and such was the position the matter at present assumed, that this was no act of his; and certainly it was not his act, but the act of the law. It was, however, asserted that he had recommended a compromise; but that the Commissioners of Police, in defiance of that recommendation, had done great service to the public by refusing to accede to it, and calling upon the defendants for justice. The answer to that was, that no such recommendation was ever made—that no such suggestion was thrown out—that no such opinion was given. He had a most accurate account of what passed on that occasion, which he would take the liberty of reading to their Lordships; and which, he believed, was perfectly conformable with what appeared in *The Times* newspaper of the following day.

He would here observe, that cases which were removed from the inferior courts by *certiorari* were brought before the Queen's Bench, without any previous knowledge of the facts on the part of the judges. No depositions were returned, and he, of course, knew nothing of the nature of the complaint. It was true, he might have found some account of the matter in the public papers, but it was his duty to abstain from noticing it. In point of fact, on this occasion, he was absolutely ignorant of what had occurred.

What were the words, then, contained in the account which he held in his hand? It appeared from it that his learned friend Sir F. Pollock, on the part of the defendants, who had pleaded "not guilty," applied to the Court for leave to withdraw that plea, and that they should be permitted to enter a plea of "guilty."

He urged the most sincere regret of the defendants for what had occurred, and their anxiety to make every possible atonement and apology. Now, it was impossible to mistake the meaning of the word "atonement." It meant, no doubt, some pecuniary compensation; a course sometimes adopted, where the nature of the case admitted of it. Where a public outrage was committed, and where a public example was necessary, no such compromise ought to take place; but where this was not the case, and where the only punishment that could be inflicted on the defendant was a pecuniary fine, it was obvious that it was better that such compensation should be given to the party injured, rather than that it should go into the Treasury, in which case he could derive no benefit from it. Those observations having been made by Sir F. Pollock, he (Lord Denman) then said,—"At least they act right now. Let their plea of 'not guilty' be withdrawn, and a plea of 'guilty' be recorded. I hope the case may be of such a nature as to admit of its being settled by private reparation."

That was the whole extent of what he said; and the supposition of its not being such a case, although the facts did not appear, was made the foundation of accusing him, because he made that observation, with screening great public offenders, and preventing a public example from being made. He flattered himself that, wherever that simple statement was heard, it would at once relieve him and the administration of justice from that, one of the many attacks, which certain persons had lately thought themselves justified in making on it. He was aware of what had been said in the public papers on this subject, of which it did not become him to take the slightest notice; but when he found that it was made the subject of general accusation, copied from one paper into another, and repeated by an honourable member of the House of Commons, on an occasion to which he need not now allude, who stated that it was an act of the grossest impropriety, and that the whole public were exclaiming against the monstrous inequality of the sentence, when Mr. Justice Erskine, at Salisbury, sentenced a man to fifteen years' transportation for a much less heinous offence than that which was suffered to pass without punishment in the Court of Queen's Bench, he (Lord Denman) deemed it necessary to bring this statement before their Lordships. He must say he thought this accusation a most extraordinary one. How could any man know which was the most heinous offence, when the one case had been tried, and the other was in course of coming before the public? He was at a loss to conceive what right any man had to publish a statement made in ignorance of the facts of the case. Was that the mode to secure the free administration of courts of justice? Was it the proper mode to support the dignity of courts of justice, to take for granted, as if proved and tried, every *ex parte* newspaper statement, and to use it as a proof of the inequality with which justice was administered?

Was it right to say this with reference to the case of a felon who had been tried and found guilty, and on whom Mr. Justice Erskine had passed sentence? He had seen it stated, with indignation, that one man had been punished with fifteen years' transportation for a less heinous offence than that for which others had been allowed to escape in the Queen's Bench. He did not mean to defend Mr. Justice Erskine. He did not know that any attack was meant to be made upon him; but it might be said, that he had punished a man with fifteen years' transportation because he was poor, just as another judge had favoured another man because he was rich. That learned judge, however, needed no panegyric or defence of his. A more excellent man, or one who applied a better understanding to the facts of any case, never appeared on the bench. He believed he might appeal to the noble marquis behind him, who would admit that, in the case to which he had alluded, jealous as the people were that justice should be impartially administered, there had been no application at the Home-office to commute the sentence. But what a notion it was, to take sentences at one place, and sentences at another, and without considering the difference of circumstances, to apply a kind of foot-rule to them,—to regard them as they might a sum in addition or subtraction; and to say there is so much heinousness in one and only so much in another, and therefore there was evidently an inequality in the administration of justice. Was it right to cast imputations in this manner on the conduct of men who had not, like others, an opportunity to defend themselves? Nothing was more likely to lead to insubordination, to licentiousness, and to a contempt for the law, than such a course.

He abstained, with some self-restraint, from entering into any other observations on the present occasion. But, as the complaint of the disproportion of punishment awarded by those who administered the law, which was made by persons who could not have the means of judging—persons who, however they gave themselves credit for better judgment and better motives than those whom they condemned, could not possibly be acquainted with the circumstances of every case, so as to form a correct opinion as to whether the sentences were deserved or not, he would make one or two observations. He was induced to do so because on a recent occasion, in the Central Criminal Court, one of the most upright, learned, and humane judges that ever graced the English bench—he meant Mr. Justice Paterson—had been attacked in one of the leading papers of this capital, in a manner that ought to have driven him from the bench, if the accusation had been well-founded, on account of some difference in the sentence which he had passed on two criminals. That learned judge had the kindness to call on him, and to explain why these different sentences were passed; and he would venture to say, that no man of common sense or common candour could have found the slightest ground

for such observations, if he had really been acquainted with the circumstances of each case.

The Marquis of *Normanby* was glad that his noble and learned friend had taken that opportunity to explain the circumstances of the case to which reference had been made; but at the same time, he thought that his noble and learned friend might have safely left it to his high character to satisfy their lordships and the public that the imputation cast on him was unfounded. He (the Marquis of *Normanby*) was anxious to say a few words as to the part taken by the commissioners of police. He gathered from the observations of his noble and learned friend himself that he felt that compromises of this nature ought to be of very rare occurrence. The commissioners of police, impressed with the same feeling, had always considered it their duty to discourage the expectation of private remuneration or compensation for the discharge of duty by police officers, because it might hold out improper temptation, or lead to injurious suspicions, in cases in which they had to give evidence in courts of justice, if they were to receive anything in the shape of pecuniary benefit. He entirely concurred in all that his noble and learned friend had said with respect to Mr. Justice Patteson. In one of the cases alluded to by his noble and learned friend, and with reference to which a charge had been made against Mr. Justice Patteson, that learned person had actually applied for and obtained a commutation of the sentence at the very time when those accusatory statements were published.

LAW OF ATTORNEYS.

AUTHORITY AFTER JUDGMENT.

A PLAINTIFF'S attorney has no authority to discharge a defendant in execution out of custody, without receiving payment of the money. This important decision occurred in the case of *Savory, assignee of Davie, a bankrupt, v. Chapman*, reported in 8 Dowl. 656.

An action was brought by the assignee of a bankrupt against the marshal of the Queen's Bench prison for the escape of a prisoner in execution. The marshal pleaded that, before he had notice of the bankruptcy, he was directed by the attorney of the plaintiff in the action to discharge the prisoner. To this plea there was a demurrer, in support of which

The *Attorney General* said, the question was, whether the marshal, as a public officer, had committed a breach of duty in discharging the prisoner from custody at the instance of the plaintiff's attorney, without notice of any act of bankruptcy by the plaintiff? Such a responsibility on the part of the marshal would imply a right in every case, after he has received from a plaintiff an order for the discharge of his debtor, to retain the debtor until search has been made for a fiat; but the marshal has no power so to detain him. In *Wi-*

thers v. Henley,^a Coke, J., said, "The liberty of a man is a thing deemed very precious in the law, and he ought not to be detained beyond the time of his discharge being given; and one being in execution, the plaintiff comes and says to the sheriff, 'Set him at large out of prison; if he will detain him afterwards in prison, but by the space of an hour, a false imprisonment will lie.'" The liability of the marshal cannot, therefore, depend on the contingency of the plaintiff's bankruptcy. This action sounds in tort. Though in form an action of debt, under the statute *Westminster 2*, 13 Ed. 1, c. 2, and 1 Rich. 2, c. 12, it is, in principle, an action on the case founded on a breach of duty. It is clear, from the case of *Withers v. Henley*, that the marshal is bound to discharge a prisoner in execution on the command of the plaintiff; and it cannot be contended that it is a breach of duty in him to obey the command of the plaintiff's attorney on the record. *Crozer v. Pilling and Moure*^b shews that an action on the case will lie against a plaintiff and his attorney on the record, for refusing to accept the debt and costs, when tendered to the attorney by the debtor in execution, and for a refusal by the attorney to authorize the sheriff to discharge the debtor; the Court there held, that the attorney was the person to whom the payment ought to have been made, and that both the defendants were jointly liable. It follows, therefore, that the attorney on the record has power to give an authority to the marshal to discharge, and that his refusal is the refusal of his client. In 2 Inst.^c it is said, that the authority of the attorney determines with the judgment, but that after judgment he may sue out execution within the year without a new warrant; and that, if he sues out execution within the year, he may prosecute it afterwards. Gilbert's *Law of Execution*, p. 52, is to the same effect. "The party who sues out the writ may agree to the liberation of the prisoner." (Per Lord *Ellenborough*, C. J., *Slackford v. Austen*)^d.

R. V. Richards, contra.—The escape took place after the plaintiff was chosen assignee. The plea alleges, that Wilmot acted as Davies' attorney "in prosecuting and conducting the action against Creswell, and in procuring his commitment." This authority would extend no further than to receive the money to be recovered, and on such receipt, to acknowledge satisfaction on the record;^e but he cannot, after judgment, release the debt or damages or acknowledge accord by the defendant with the plaintiff.^f The plea further alleged that Wilmot "as such attorney, did require and direct" the marshal to discharge Creswell. No authority has been cited for this power. In *Withers v. Henley*, the plaintiff ordered the discharge, a power which is not disputed un-

^a 3 Buls. 96.

^b 4 B. & C. 26.

^c P. 578.

^d 14 East, 468.

^e 1 Roll. Abr. 291.

^f Com. Dig. Attorney, B. 10.

less the plaintiff has become bankrupt; but the attorney's authority is so far determined by the judgment, that the plaintiff may sue out execution by a different attorney, without an order to change. On this point, the case of *Tipping v. Johnson*,^s is an authority. At all events, any right of the attorney to interfere ceased on the bankruptcy of his client, for the body of a debtor in execution is a security for the payment of the debt, which in this case had, by stat. 1 & 2 W. 4, c. 65, s. 25, vested in the assignee. The bankrupt himself could not have released the debt or invalidated the security; how then could his attorney? The assignee is entitled to the security. [*Coleridge, J.*—Suppose the plea, instead of a discharge by the plaintiff's attorney, had alleged payment of the whole debt and costs to the plaintiff before notice of his bankruptcy; you must go the length of saying that such payment could not avail the marshal in this action.] It would not be good, at least after the date of the fiat. That a secret act of bankruptcy may make the sheriff a *tort-fensor* is clear, from the case of *Cooper v. Chitty*,^h and the marshal runs no greater risk than the sheriff. If notice of an act of bankruptcy is required to affect the marshal, why should not the sheriff have the same protection? [*Coleridge, J.*—The sheriff is directed to seize the goods of the debtor, not of his assignees; but the marshal acts as a public officer in discharging the defendant from execution.] He can only discharge by due course of law; for the body of the debtor represents the debt. As to *Croser v. Pilling*, it is conceded, that if the attorney receives payment or a good tender, and refuses to discharge, he may render his client and himself liable to an action; for it is the attorney's duty to receive the money recovered. Davie's interest in the detention was gone. In *Ex parte Kemhead*,ⁱ it was held, that a prior act of bankruptcy by one of the parties revoked a submission to arbitration. After some further argument,

Lord Denman, C. J., delivered judgment.—The question is, whether the order of the plaintiff's attorney in the original suit can be pleaded by the marshal to an action for an escape of a prisoner in custody at the suit of a judgment creditor. With regard to the duration of the attorney's authority, it would appear from the old books, that it terminates with the judgment obtained in the suit in which he had been retained; but the latter cases tend to shew that he may sue out execution within a year after judgment. But be that as it may, I think the marshal has not shewn a sufficient ground to relieve himself from responsibility for the escape. His whole statement is, that the attorney of the plaintiff in the former action, had desired him to discharge the prisoner in execution; but he does not set forth either that the money due on the judgment was paid, or that the attorney had the special authority

of his client for such discharge. If the mere relation of attorney and client would create such authority, the marshal might justify the discharge, because in that case, the act of the attorney would be the act of the client; but if no such authority results from that relation, the act of the attorney alone cannot, in that case, supply the marshal with a valid defence. If he has been deceived, it is unfortunate, but a creditor must not therefore suffer. He has an undoubted right to have the body of his debtor as a security for the debt. It has been urged, in the course of the argument, that the marshal would have made himself liable to an action for false imprisonment if he had detained the prisoner in custody after receipt of the written order for his discharge; but if such action were brought, it would fail altogether, if it should appear on the trial that the plaintiff in the original suit had not received payment in satisfaction of the judgment, or had not himself authorised the discharge without payment.

Littledale, J.—The authority of the attorney on the record terminates with the judgment; but he may afterwards sue out execution within the year and receive it; he may enter satisfaction on the record, (1 Roll. Abr. 291) and there are other authorities to the same effect. Payment of the debt to him, therefore, would be a good payment. But it is not averred in this plea that the money was paid to him, but that as the plaintiff's attorney, he required and directed the marshal to release the debtor out of custody. The mere fact of his being the plaintiff's attorney would not of itself give him an implied authority to discharge the debtor out of custody before he receives payment, though, according to the case of *Croser v. Pilling*, if the money was received by the plaintiff himself, or by his attorney, the attorney alone may authorize the discharge of the debtor.

Patterson, J.—It is unnecessary here to consider the effect of the bankruptcy. The whole question turns on the power of a plaintiff's attorney to discharge a defendant in execution; and it is quite clear, that a plaintiff's attorney cannot of his own authority, discharge a defendant without payment. One of two things must appear as the ground of such discharge, neither of which is alleged by this plea; first, either a payment or tender of the money due on the judgment to the plaintiff or his attorney, or that the plaintiff chose to consent to the debtor's discharge without payment. It does not allege payment or tender. If a plaintiff's attorney receives the money, he may authorize the discharge; but the marshal, if he relies on that fact, must shew payment. Nor does the plea allege that Davie (the plaintiff) dispensed with payment; nor that the attorney had special authority from his client to discharge without payment. For aught that appears on this plea, the client might have positively forbidden the discharge. It is defective, therefore, for want of shewing payment to the plaintiff, or his attorney, and for not shewing power in the attorney as his attorney, to authorize this discharge. In *Croser v. Pil-*

^s 2 B. & P. 357.

^h 1 Burr. 20.

ⁱ 1 Rose, 149.

ing, there is a short observation of *Holroyd, J.*, to shew that the marshal has a right to detain for the purpose of satisfying himself that the debt has been paid after receiving an order to discharge.

Coleridge, J., concurred.

LEGAL ANTIQUITIES.

ANCIENT EGYPTIAN DEED.

IN our Monthly Record for *August* last, (30 L. O. 342) we were enabled to lay before our readers the translation of an Egyptian Deed, made more than one hundred years before the Christian era. Our attention has recently been called to the publication of the same document in the *North American Review* for *October*, accompanied by some information of which we were not in possession. It is said by the writer in the review, that he had not seen any allusion to the document in the *juridical journals* of Great Britain or America. We claim, however, the merit of the first publication of the deed, with such remarks as occurred to us on its perusal, and we now subjoin the information given. It appears, from a work of the learned professor Boeckh of Berlin, with the subsequent emendations of Dr. Thomas Young and professor Buttmann.

Several years ago, by a most remarkable concurrence of circumstances, the learned world was put in possession of some original and very ancient legal documents from Egypt, which throw light on the jurisprudence of that renowned country.

The original manuscript deed in question is written in the Greek language—as was common while Egypt was under its Greek dynasty—and is known among the learned as the Papyrus of Mr. Anastacey, the Swedish consul at Alexandria, to whom it belonged. A perfect fac-simile, exhibiting even the blemishes and colouring of the original, was obtained by General Minutoli, and transmitted by him to the Royal Academy of Sciences in Berlin about the year 1820; and from this fac-simile, an engraving of which is given in the Berlin Transactions above referred to, a translation of the document was made, accompanied with elucidations by the eminent scholars above named.

The manuscript is an original instrument of sale of a piece of land in the city of Thebes, bought by one Nechutes; and it was probably in his tomb that the document was found, where the sanctity of the place would the better insure its safe preservation. On the left hand margin there is the figure of a human head, which is either a stamp or a seal, and which has a beard, according to the Greek custom.

This document is, in many respects, of the highest interest. In the first place, we learn from it several circumstances relating to the Egyptians; and then it is extremely valuable, as a memorial in the history of the written language of Greece. In relation to this last

point, it should be recollected that there has long been a dispute, whether the Greeks, in the common business of life, used an alphabet of *small* letters, technically called by scholars *curvise* letters, or had only the *uncial* or capital letters, which have come down to us in the inscriptions upon their marble monuments and their coins. For, although the Greeks of the present day have an alphabet of small letters, the origin of which has not been traced, yet all the manuscripts of the classic authors of Greece which are now extant in the *curvise* character, are of comparatively modern date; and hence some learned men have too hastily drawn the conclusion, that the small letters of the modern Greeks are one among their many supposed corruptions of the language of their fathers. In the document now under our consideration, we have a specimen of *curvise* writing, of an ascertained date, at least as early as the year 104 *before* Christ; and we may safely conclude that a *curvise* hand was in use before that period. It is worthy of remark, too, as we may infer from this document, that the Greek language was already in general use in Egypt—even Upper Egypt—as the legal or official language in transactions of business.

The writing in question consists of two separate portions: the first or principal part contains the contract of sale of the land; the other, which is on the right hand, and in a somewhat smaller character, is a certificate of the registry of the sale in the office or records of the appropriate jurisdiction. The certificate is more recent, and in a different and more careless handwriting; and we may hence infer, that this instrument of sale is not a copy, but the original itself.

The contents of the papyrus are briefly as follows:—In the first part, lines 1 to 5, we have the usual designation of the epoch or reign, and the names and titles of the sovereigns in whose time the instrument was executed, which were requisite in order to give it the proper formalities, just as the deeds of lands in England used anciently to begin with a recital of the king's reign, and a designation of his titles, &c. After the introductory recital, from line 6 to 13, we have the formal statement of the contract, the names of the parties, and, what is very remarkable, descriptions of their *persons*, just as they would be given in a modern passport of a traveller in the different countries of Europe.

By a most extraordinary coincidence, after the discovery of this Egyptian deed, a papyrus was found, containing the record of a *lawsuit* before an Egyptian tribunal, in which reference is made to several title-deeds; by one of which, Asos, the father of the defendants Nechutes and Asos, with *Nechutes the younger* (the purchaser in our present deed), bought the land which was in litigation; and two, if not three, of the very title-deeds referred to in that trial are still preserved, and are in the possession of an individual in England (George F. Grey, Esq.), who purchased them of an Arab at Thebes, in January 1820!

REMARKABLE WILLS.

No. II.

HENRY IV., A. D. 1408.

In the name of God, Fadir and Son, and Holy Gost, thre persons and on God. I Henry, sinful wretch, be the grace of God Kyng of England, and of Fraunce, and Lord of Irland, being in myne hole mynd, mak my testament in manere and forme that suyth: First, I bequeth to Almyghty God my sinful soul, the whiche had never be worthy to be man but through hys mercy and hys grace; whiche lyffe I have mispendyd, whereof I put me whollily in his grace and his mercy, with all myn herte. And what tym hit liketh hym of hys mercy for to tak me to hym, the body for to be heryed in the chirch at Caunterbury, after the descrecion of my cousin the Archbyschopp of Caunterbury. And also I thaak all my lordis and trew peple for the trewe servise that they have done to me, and y ask hem forgiveness if I have miscentrested hem in any wyse. And als far as they have offendyd me in wordis, or in dedis in any wyse, I prey God forgeve hem hit, and y do. Also y devys and ordeyn that there be a chapntre perpetuall of twey preestis, for to sing and prey for my soul in the aforesyd chirch of Caunterbury, in soch a place and after soch ordinaunce as it seemeth best to my aforesyd cousin of Canterbury. Also y ordeyne and devise that of my gooddis restitution be made to all hem that y have wrongfully grevyd, or any good had of theirs without just tyle. Also I will and ordeyne that of my goodis all my debtes be paid in all hast possible, and that my servants be rewardyd after their nede and desert of service, and in especyal Wilkin, John Warren, and William Thorpe, gromes of my chambre. Also y will that all those that in any wyse be bond in any debt that y owe in any wyse, or have undertake to any man for

any debt that y owe, or that they can dewley shewe hit, that all soche persons be kept harmlysse. Also I will that all fees and wages that ar not paid be paid, and in especial to my servants of my household, befor any odel. And also, that all myn annuities, fees, and donations, granted by me befor this tym be my lettres patents, be kept and paid after the effect of the forseyd letters patents; and yn especial to all hem that have been trewe servants to me and toward me alway. Also y will and prey my son that he have recommendyd Thomas de la Crois, that hath well and trewly servyd me, and also in the same wyse Jacob Raysh and Halley. Also I will that the Quene be endowyd of the Duché of Lancastre. Also I will that all my officers both of household and other, the which nedeth to have pardon of any thing that touch here offices both of losse and oder thing, they have pardon therof in semblaile manere as I of my grace have be wont to do befor this tym. And for to execut this testament well and tralich, for grete trust that I have on my son the Prince, y ordeyne and mak him my executor of my testament forseyd, kalling to him soche as him thinkyth in his discrecion that can and will labor to the sonnest spede of my will, comprehended in this myn testament. And to fulfill trewly all things foresaid, y charge my foresaid son upon my blessing. Wetnesyng my well-belovyd cousins Thomas erchbyschop of Caunterbury forseyde, and Edward duke of Yorke, Thomas bischop of Duresme, Richard the Lord Grey my chamberlayne, John Tiptoft myn treasurer of Englund, John Prophete wardeine of my privie seale; Thomas Erpingham, John Norbery, Robert Waterton, and many oder being present. In witnessyng whereof, my privy seale be my commandement is set to this my testament. Lyeve at my manere of Greenwich, the xxi day of the moneth of Janver, in the yere of our Lord mcccviij and of our reignethetenth.—*From Nichols' "Royal Wills."*

CANDIDATES WHO PASSED THE EASTER TERM EXAMINATION.

Name of Applicant.

Adams, John Hilditch

Adcock, Justinian

Allsop, John Freston

Arnold, John, the younger

Aubin, George Douglas

Bainbridge, Utrick

Bannatyne, W. Joseph Frederick

Bartlett, Thomas John Moysey

B.-st, Charles

Braddon, Henry Edward

Brandwood, Thomas

Buck, William

Carlson, Edmund

Chandler, Benjamin, jun.

Colman, George Augustus

Copeman, George

Name & Residence of Attorney, to whom articulated, assigned, &c.

Thomas Vaudrey, Congleton; assigned to Daniel Coruthwaite, 3, Dean's Court, Doctor's Commons.

Stephen Adcock, Cambridge.

Matthew Brettingham, Kingsbury, Bungay; James Taylor Margitson, Bungay.

John Arnold, the elder, Birmingham.

Archibald Cameron and Henry Foley, Worcester.

Robert Walton Bainbridge, Alston.

William Ody Hare, Bristol.

William Rufus Jordon, Teignmouth.

Thomas Eyre Lee, Birmingham.

William Harding Wright, 23, Essex Street, Strand.

William Eccles, Blackburn.

Hugh Evans, 2, Gray's Inn Square; assigned to John

Whitlock, 70, Aldermanbury.

Charles Gurney, Launceston.

James Livett, Bristol.

Patrick Nelson, 11, Essex Street, Strand.

Robert William Parmeter, Aylsham.

Name of Applicant.

Crowdy, James
Cunning, Francis Brooking

Dalton, Samuel

Dalrymple, Robert Farre
Daniell, Henry

Daniel, Charles
Davenport, Robert
Dawson, Thomas William
Day, Samuel
Edger, Henry
Enfield, Richard
Evans, Thomas
Fallowdown, Charles Selby
Fisher, Thomas Forrest
Fletcher, Thomas
Fortescue, John
Galsworthy, William

Goldingham, Herbert George
Gray, Thomas William
Greatwood, Robert

Greig, Robert Reed
Gunning, John
Gurney, William

Harvey, Clement

Hinde, William
Hird, Charles William
Holdich, Charles Walter
Horwood, Thomas
Hulbert, Henry Hale

Humphreys, William Joseph
James, Charles
Jeyes, Francis Ferdinando
Kemp, Edward Louis, junr.

Kitson, Frederick
Last, Charles Henry
Leader, William, jun.
Leigh, George William

Lewellin, Henry

Lindsay, Richard Fydel
Long, Samuel Searley
Lucas, Frederick Richard
Manners, John
Marter, William Ingram
Mason, Wilford
Mathias, George

Minty, Richard George Peru
Morse, William Henry.
Mutlow, John Vaughan
Neale, Robert

Newmarch, George Frederick
Nicoll, Edward Vere
Palmer, Edward Seymour
Pardoe, Frederick
Parr, Henry
Payne, John Webber

Name and Residence of Attorney, to whom articulated, assigned, &c.

William Morse Crowdy, of Swindon, Wilts.
Charles Michelmore, Totnes; assigned to Charles Jenings, Elm Court, Temple.
Thomas Goode, late of Dudley, deceased; assigned to John Bolton, Dudley.
Robert Bayley Follett, Bedford Row.
Edward Daniell, Colchester; assigned to Walter Powell, 7, Martin's Lane.
Martin Long Daniel, Ramsgate,
Thomas Davenport, Liverpool.
Abraham Dawson, Newcastle-upon-Tyne.
William Day, St. Neots.
Robert Watson, 12, Bouverie Street, Fleet Street,
Henry Enfield, Brancote, Nottingham.
Robert Evans, Chepstow.
Peter Wright, Inner Temple.
Joseph Fisher Cleve, Somerset.
Peter Hodgson, of Whitehaven.
Thomas Morris, Warwick.
William Rosher, Rosheville, Kent; assigned to James Shelton Newbon, 1, Wardrobe Place, Doctor's Commons.
Charles Pidcock, Worcester.
Richard Perkins, 15, Gray's Inn Square.
William Greatwood, Birmingham; assigned to Richard Edgar Smith, Gray's Inn Place.
Robert Weddell, Berwick-upon-Tweed.
Henry Ray, Bristol.
John Henry Padcock Gurney, Penzance; assigned to Francis Paynter, Penzance.
John Chadborn, Gloucester; assigned to William Vincet Ellis, Gloucester.
George Henry Dunsey, Ludlow.
Charles Hird, 3, Little Argyll Street, Regent Street.
William Hungerford Holdich, of New Sleaford.
Jackson Walton, 8, Warrford Court, Throgmorton Street.
Charles Hulbert, Chapelry of St. James's, Bishop's Camings, Wilts.
Richard Humphreys, Rose Hill, parish St. Asaph, Flint.
John James, Newnham, Gloucester.
Ferdinando Jeyes, 69, Chancery Lane.
George Henry Drake, Exeter; assigned to Edward Lewis Kemp, Exeter.
Ralph Barnea, Exeter.
Isaac Last, Hadleigh, county Suffolk.
John Fielder, 22, Duke Street, Grosvenor Square.
James Warne, Basingstoke; assigned to Edward Willoughby, Lancaster Place.
James Groves, the younger, 25, Charlotte Street, Bedford Square.
Francis Thiskill and Henry Rogers, Boston.
Samuel Long, Portsea.
Frederick Lucas, Louth.
Thomas Manners, Grantham.
Georges Bowes Morland, Abingdon.
John Curtler, Droitwich.
Frederick Caiger, Winchester; assigned to Thomas Ferri Addison, Gloucester.
Gardner Chapman, Norwich.
Henry Williams, Lincoln.
James Collins, Ledbury.
Joseph Barker, Chipping, Solbury; assigned to Edward Daniel, the younger, Bristol.
George Newmarch, Cirencester.
John William Richard Wilson, Preston.
William Palmer, the elder, Birmingham.
John Lloyd, Ludlow.
James Otley Watson, Liverpool.
Hele Webber Payne, Winkleigh; assigned to John Daw, Exeter.

<i>Name of Applicant.</i>	<i>Name & Residence of Attorney, to whom articulated, assigned, &c.</i>
Pinson, John	Thomas Eyre Lee, Birmingham.
France, James Vaughan	Martin Kemp Welch, Poole.
Pratt, Richard Frederick	Edward Lee Pemberton, 20, Whitehall Place.
Radford, John Arundel	Charles Smale, Bideford; assigned to John Browne, 8, Guildford Street.
Rivolta, Dominico Antonio	James Fawcett, 44, Jewin Street.
Rogers, Reginald	Ralph Sanders, Exeter.
Russell, William Bunney	John Malbury Cooke, Towcester, Northampton.
Russell, Thomas Francis	Thomas Harvey, Liverpool.
Sadler, John Dendy	Henry Padwick, Horsham.
Smith, William Edward	Richard Parsons and Richard William Benn, Mansfield; assigned to Campbell W. Hobson, Gray's Inn.
Smythies, Walter Tyson	John Grene, Bury St. Edmund's.
Sutton, William Sims	Thomas Buckby Lefevre, Birmingham; assigned to George Jabet, Birmingham.
Taylor, Henry Charles	John Kendall Bewick, of Birmingham.
Taylor, Thomas Hamlet	James Birch Kelly, 1, Inner Temple Lane.
Thomson, William Henry	William Sextus Harding, of Waterloo Street, Birmingham.
Thwaites, John Eakett	Richard Thompson, Durham.
Todd, Henry	Joshua Todd, 7, Norfolk Street, Manchester.
Verrall, Albert	Edward Verrall, Lewes.
Wallington, Richard Archer	Thomas Morris, Warwick.
Walrod, William James	George Cox, Bucklersbury.
Williams, Griffith Jones	William Griffith, Dolgelly; assigned to Rowland Williams, Dolgelly; re-assigned to Henry Weeks, 12, Cook's Court, Lincoln's Inn.
Wilson, John	John Tindall, Manchester.

ATTORNEYS TO BE ADMITTED.

Michaelmas Term, 1841.

QUEEN'S BENCH.

<i>Clerk's Name and Residence.</i>	<i>To whom articulated, assigned, &c.</i>
Adamson, Charles Murray, 35, Marchmont St.; and Newcastle-upon-Tyne.	Nicholas Walton, Newcastle-upon-Tyne; assigned to John Stevenson, King's Road.
Aitkens, John, 30, Upper Belgrave Place, Pimlico.	John Parker Bolding, Scots Yard.
Bond, Mark, 8, Welbeck Street.	John Waite, Welbeck Street.
Bennett, W. Woolley Leigh, Gawcott, near Buckingham.	Thomas Hearn, Buckingham.
Babington, Edward, the younger, Horncastle.	Edward Babington, Horncastle.
Barber, Samuel, 123, Pall Mall.	George Fred. Prince Sutton, Basinghall St.
Barnby, Joseph, Bridlington.	William Smith, Bridlington.
Black, William, 13, Bedford Square.	Henry Edward Stables, Copthall Court.
Blandy, William, Chepping Wycombe; and Devizes	William Edmund Tugwell, Devizes.
Bridges, George Talbot, 11, Margaret Street, Cavendish Square.	Nathaniel Mason, Red Lion Square.
Bushell, Henry Richard, 18, Gower Street; Dover; Great Russell Street; Upper Seymour Street; and Took's Court.	Edward Knocker, Dover.
Buckersfield, T. Henchman, Pyle.	John Halcombe, Marlborough.
Brown, Irwin Caulfeild, 4, Stone Buildings; and East Retford.	George Marshall, East Retford.
Baldock, Henry, 3, Foley Place; and Letham.	Edward Twopeny, Rochester.
Buncombe, William, 36, Judd Street; and Chard.	Samuel Walter, Chard.
Black, David, 17, Grosvenor Row, Pimlico; and Northampton Square.	Thomas Freeman, Brighton.
Barber, Henry, 15, President Street East, and Great Yarmouth.	Christopher Sayers, Great Yarmouth; assigned to George Wells Holt, Great Yarmouth.
Bousfield, W. Check, the younger, 5, Verulam Buildings.	Edward Bousfield, Chatham Place; assigned to Charles Thick, South Square; assigned to William Dawes, Serjeants' Inn.

Browne, George Frederick, 41, Argyll Street ;
Diss ; and 29, Henrietta Street.
Bencroft, Richard Incledon, Barnstaple.
Clarke, Robert George, Highgate Hill.
Camden, Charles Taylor, 45, Penton Place,
Pentonville ; and Kensington.
Corser, George Sandford, Whitchurch.
Campbell, John Thomas, 36, Mornington
Crescent ; and Bath.
Church, Edmund Boyle, 33, Essex St., Strand.
Cooper, Montague Ormsby, 32, Connaught
Square ; and Wyndham Place.
Craig, Alexander Samuel, Shrewsbury.

Clarke, John, 11, Stafford Place, Pimlico ; and
Banbury.
Charlcock, Richard Stephen, 28, Woburn Place.

Harry Browne, Diss ; assigned to Thomas Ed-
ward Wallace, Diss.
John Sherard Clay, Barnstaple.
William Mark Fladgate, Craven Street.
Thomas France, Bedford Row.

Richard Parry Jones, Whitchurch.
William Adair Bruce, Bath ; assigned to Henry
John Mant, Bath.
Edward Frowd, Essex Street.
William John Whyte, Vernon Place.

John William Watson, Shrewsbury ; assigned
to Sir John Bickerton Williams, Knight,
Shrewsbury ; assigned to Charles Dixon
Craig, Shrewsbury.
Thomas Tims, Banbury.

Richard Charnock, Temple ; assigned to W.
Christmas Mansfield, John Street.

FURTHER RE-ADMISSIONS, *last day of Trinity Term.*

QUEEN'S BENCH.

William Caster Gates, 2, Hoxton Square.
Christopher Hawdon, 9, Sherborne Lane.

COMMON PLEAS.

John Hunter, of Rouen, France, and Hogarth
House, Chiswick.

LEGAL OBITUARY.

On the 2d April, in his 621 year, Mr. William Richardson, of Walbrook, a Solicitor, and one of the earliest members of the Incorporated Law Society. He was formerly in practice in Clement's Inn, and, about the year 1820, joined his brother in the city. The latter subsequently obtained an appointment in the Bankruptcy Court. Mr. Richardson became a member of the corporation of London, and an active member of the most important committees of the Court of Common Council, and frequently received a vote of thanks. He was undersheriff to Mr. Alderman Copeland, M.P., who was sheriff in 1828, and also to Mr. Edward Archer Wilde, who became sheriff in the following year ; in 1837 he was elected Deputy Governor of the Honourable the Irish Society, and at the time of his death, he was deputy to Michael Gibbs, Esq., one of the present sheriffs, as alderman of the ward of Walbrook. His reputation in the profession stood high, and he was generally known to its old and respectable members. He had fourteen children, eleven of whom, with his widow, survive. The following extract is from the newspapers of the 14th April :—
" On Saturday the 10th instant, the funeral of William Richardson, Esq., deputy of the ward of Walbrook, took place. His remains were interred in St. Stephen's Church, Walbrook, and the service was performed by the Rev. Dr. Croley, Rector of the parish. Mr. Alderman and Sheriff Gibbs, and several friends of the deceased were present on the occasion. He had been one of the representatives of the ward in Common Council for upwards of twenty year, and so general was the respect shewn to his

memory, that almost every house in the ward was partially closed, and some entirely so. He was much beloved in private life, and well known for his urbanity of manner and kindness of disposition."

INCORPORATED LAW SOCIETY.

MEMBERS ADMITTED.

William Adderly Smale, Arundel Street.
Henry Thomas Coles, Suffolk Street, Pall Mall.
Thomas Neufvills Crose, Hatton Court.
Charles Buck, Preston.
Thomas Hepworth, Ely Place.
Charles May Simmons, Rochester.
George Wilson, New Inn.
John Finch } Old Jewry.
Charles Shephard }
John Llewellyn Evans, Doctors' Commons.
George William Killett Potter, Basinghall
Street.
Samuel Hobbs, Wells, Somerset.
Samuel Wix, Austin Friars.
Henry Macgregor Clark, Essex Street.
George Wilde, New Square, Lincoln's Inn.
Richard Comins, Hare Court, Temple.
John Sidney Smith, Six Clerks' Office.
Thomas Smith, Funnival's Inn.
George Harper, } Whitchurch, Salop.
Richard Parry Jones, }
Frederic John Manning, Dyer's Buildings.
John Hardcastle Mousley, Derby.
Frederick William Devey, Ely Place.
Edwin Lethbridge Trimming, Barnard's Inn.
George Hildyard, Funnival's Inn.
Frederick Clarke, Carey Street.
Daniel Lewellin, Rolls Chambers.
Thomas Prothero, Welbeck Street.
Benjamin Bradley Hewitt, Upper Seymour
Street.

William Barker, Mark Lane.
 William Poole, Great Ormond Street.
 Daniel Sharp, Southampton.
 Robert Russell, Wellington Street, Southwark.
 Robert Hayes, Princes Street, Bedford Row.
 Charles Bell, Bedford Row.
 James Whitton Arundell, Lincoln's Inn Fields.
 Francis Boardillon, Gray's Inn Square.
 Ralph Thomas, Crane Court, Fleet Street.
 Stringer Stringer, Gordon Place, Tavistock Square.
 Thomas Wontner, Ely Place.
 George Smith, Golden Square.
 Charles Ranken Vickerman, South Square, Gray's Inn.
 Thomas Stackhouse Burton, Salisbury Street, Strand.
 George Barrow Gregory, Bedford Square.
 Charles James Abbott, New Inn.
 Charles Matthew Clode, Gordon Place, Tavistock Square.
 Robert Wilton, Gloucester.
 John James Johnson, Duke Street, Grosvenor Square.
 John Lindsay Lawford, Drapers' Hall.
 Thomas Stone, Welclose Square.
 Oxley Tilson, Coleman Street.
 Henry Goodford, Lincoln's Inn.
 Nicholas Broadmead, Langport.
 John Watson, junr., Trafalgar Square.

MASTERS EXTRAORDINARY IN CHANCERY.

From 20th April to 21st May 1841, both inclusive, with dates when gazetted.

Mutlow, John Vaughan, Leabury, Herefd. May 18
 Whall, Robert, Chesterfield, Derby. May 21.
 Stone, John, Bath. April 27.
 Gadsby, John, Derby. May 4.
 Kettle, Rupert Alfred, Wolverhampton, Stafford. May 7.

DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

From 20th April to 21st May, 1841, both inclusive, with dates when gazetted.

Van Sandan, Andrew, and John Howell, King Street, Cheapside, Attorneys and Solicitors, May 11.
 Whitley, John, and Thomas Rogerson, Liverpool, Attorneys. May 11.
 Howard, J. H., and George A. Croft, Cheltenham, Gloucester, Solicitors and Conveyancers. May 14.
 Moss, Edward, and John Humphreys, Queen Street, Cheapside, Attorneys and Solicitors. April 27.
 Anderton, James, and Chas. D. Scott, New Bridge Street, London, Attorneys and Solicitors. April 27.
 Gell, Francis Harding, and John Edward Fullagar, Lewis, Sussex, Attorneys and Solicitors. May 4.
 Smithson, Joseph, and Thomas Francis Pinkney, Chiswell Street, Finsbury, Attorneys and Solicitors. May 14.
 Atkinson, F. R., Henry Birch, and J. Saunders, Manchester, Attorneys, Solicitors, Conveyancers, and Law Agents. May 19.
 Bush, John, and Edwd. Leigh Master, St. Mildred's Court, Poultry, London, Attorneys and Solicitors. May 18.
 White, Richard Samuel, George Carew, and Henry

White, Lincoln's Inn Fields, Attorneys and Solicitors. May 21.
 Fairclough, George Frederic, and Francis Edwin Wiatt, Liverpool, Attorneys and Solicitors. May 21.

BANKRUPTCIES SUPERSEDED.

From 20th April to 21st May, 1841, both inclusive, with dates when gazetted.

Reynolds, Jerry, Saddleworth, York, Woollen Manufacturer and Innkeeper. May 11.
 Edwards, Lewis, Dowlais, Merthyr Tydfil, Glamorgan, Grocer and Draper. May 11.
 Young, John, and George Bentley, Wolverhampton, Stafford, Ironfounders. May 14.
 Jones, George, Birmingham, Iron Founder. April 23.
 Hobbins, Joseph, Wednesbury, Stafford, Iron Master. April 30.
 Wyke, John, and James Davies, Newton, Mottam, in Longendale, Chester, Iron Founders and Machine Makers. April 30.
 Chitty, Manwaring, Farnham, Sussex, Auctioneer and Agent. May 4.

BANKRUPTS.

From 20th April to 21st May, 1841, both inclusive, with dates when gazetted.

Algar, John, Great Yarmouth, Norfolk, Fishing Merchant. Palmer, Great Yarmouth; Storey, Field Court, Gray's Inn. May 14.
 Abbott, Peter Harris, King's Arms Yard, Moorgate Street, London, Merchant. Pennell, O.E. Ass. Turner & Co., Basing Lane. April 23.
 Appleby, John, Stockport, Chester, Grocer. Bower & Co., Chancery Lane; Barratt, junr., Manchester. April 27.
 Berry, John, Liverpool, Banker and Accountant. Watson, Liverpool; Addington & Co., Bedford Row. April 20.
 Brown, Lawrence Thomas, Newent, Gloucester, Innkeeper. Messrs. Wilton, Gloucester; Cadle, Newent; Cree & Son, Verulam Buildings, Gray's Inn. April 20.
 Burnard, Thomas, Bideford, Devon, Merchant. Carter & Son, Bideford; Vandercom & Co., Bush Lane, Cannon Street. April 20.
 Borton, William, Kirby Misperton, York, and of the city of York, Banker. Dyneley & Co., Gray's Inn; Watson, Pickering. April 23.
 Boring, Robert, Bridge Street, Westminster, Milliner. Gidson, Off. Ass.; Slater, Millbank St., Westminster. April 27.
 Banks, Edward, Birmingham, Button Maker. Chaplin, Gray's Inn Square; Harrison, Birmingham. April 27.
 Bannan, Benjamin, Bedford Forum, Dorset, Piano Forte Maker. Bishop, Southampton Buildings, Chancery Lane; Moore, Wimbourne Minster. April 27.
 Bates, Benjamin, Robin Hood Lane, Blackwall, Middlesex, Grocer. Groves, O.E. Ass.; Simpson & Co., Aust n Friars. April 30.
 Bartlett, John, Shepton Mallett, Somerset, Grocer and Tea Dealer. Hammond, Furnival's Inn; Nahler, Crocombe, Somerset. May 4.
 Barker, Josiah, Preston, Lancaster, Cotton Spinner. Cawley & Co., Southampton Buildings, Chancery Lane; Lodge & Co., Preston. May 4.
 Brown, Charles, Oxford Street, China and Glass Dealer. Green, Off. Ass.; Farrar & Co., Goddian Street, Doctor's Commons. May 7.

- Burgess, Richard, and John Burgess, Macclesfield, Chester, Silk Throwsters. *Johnson*, Off. Ass.; *Crowder & Co.*, Mansion House Place. May 7.
- Booth, Joseph, sen., Joseph Booth, jun., and Stephen Booth, Leeds, York, Stuff Manufacturers. *Fidley*, Inner Temple; *Lofthouse & Co.*, Leeds. May 7.
- Browne, Benjamin Wells, Lowestoft, Suffolk, Cooper, Fish Merchant, and Salt Merchant. *Adlington & Co.*, Bedford Row; *Norton*, Lowestoft. May 7.
- Barber, John Vaughan, Walsall, Stafford, Banker. *Chaplin*, Gray's Inn Square; *Stubbs & Co.*, Birmingham; *Jesson*, Walsall. May 11.
- Beaumont, John, Huddersfield, York, Grocer. *Battye & Co.*, Chancery Lane; Messrs. *Clough*, Huddersfield. May 11.
- Beaumont, William and Henry Greaves, Bright-helmstone, Sussex, Linen Drapers. *Whitmore*, Off. Ass.; *Hardwick & Co.*, Cateaton Street. May 21.
- Coe, William Freeman, formerly of Cambridge, now of Bourn, Cambridge, Cattle Salesman, *Hall*, Brunswick Row, Queen's Square, Bloomsbury; Messrs. *Foster*, Cambridge. April 20.
- Cross, Charles, and Barnard Spaul, Colchester, Essex, Merchants. *Sparting & Co.*, Colchester; *Wood & Co.*, Corbet Court, Gracechurch Street. April 23.
- Carr, Peter, John James Robinson, and Christopher Bell, Leeds, York, Flax Spinners. *Wigleworth & Co.*, Gray's Inn Square; *Richardson*, Leeds. April 27.
- Carr, John Edge, Kingsnorton, Worcester, Factor. *Church*, Bedford Row; *James*, Birmingham. April 30.
- Cheshire, John, Upper Street, Islington, Middlesex, Linen Draper. *Alsager*, Off. Ass.; *Lloyd*, Cheap-side. May 4.
- Cannon, Charles, Dark House Lane, Lower Thames Street, London, Fish Factor and Fruit Merchant. *Whitmore*, Off. Ass.; *Murray*, London Street, Fenchurch Street. May 7.
- Callum, William, Pattingham, Stafford, Farmer. *Bigg & Co.*, Southampton Buildings, Chancery Lane; *Thurstons & Co.*, Newport, Salop. May 7.
- Cope, Richard, Stafford, Sack Dealer and Glass Dealer. *Kern & Co.*, Stafford; *White & Co.*, Bedford Row. May 11.
- Comley, George, North Ribley, Gloucester, Clothier. *Heathcote & Co.*, Coleman Street, London; *Bishop*, Dursley. May 11.
- Cadbury, James, New Bond Street, Cheesemonger. *Green*, Off. Ass.; *Humphreys*, Newgate Street. May 18.
- Chequer, William, Blackfriars Road, Surrey, Saddler. *Gibson*, Off. Ass.; *Swan*, Sergeant's Inn, Fleet Street. May 21.
- Dickson, James, Newcastle-upon-Tyne, Draper. *Williamson & Co.*, Verulam Buildings, Gray's Inn; *Ingledeu*, Newcastle-upon-Tyne. April 20.
- Dollman, Edward, Church Court, Clement's Lane, London, Merchant. *Alsager*, Off. Ass.; *Fisher*, Great James Street, Bedford Row. April 23.
- Day, Thomas, and Thomas Appleby, Cheddleton, Stafford, Paper Manufacturers. *Price & Co.*, Lincoln's Inn; *Bishop*, Shelton Hall, Staffordshire Potteries. April 27.
- Dannit, Christopher, jun., Talbot Inn Yard, Southwark, Surrey, Hop and Seed Merchant. *Belcher*, Off. Ass.; *Barker & Co.*, Mark Lane. April 30.
- Dixon, William, Walsall, Stafford, Brass and Cock Founder. *Whits & Co.*, Bedford Row; *Smith*, Walsall. April 30.
- Dannit, Christopher, jun., Southwark, Surrey, Hop and Seed Merchant. *Belcher*, Off. Ass.; *Barker & Co.*, Mark Lane. May 4.
- Davis, John Berkeley, Tottenham Court Road, Middlesex, Ironmonger. *Graham*, Off. Ass.; *Barton*, Cheltenham Place, Lambeth. May 4.
- Donovan, Andrew Francis, Liverpool, Merchant. *Sharp*, Staple Inn; *Rowley & Co.*, Manchester. May 7.
- Doxford, William, Bishopwearmouth and Monkwearmouth, Shore, Durham, Ship Builder. *Swaine & Co.*, Frederick's Place, Old Jewry; Messrs. *Wright*, Sunderland. May 7.
- Davidson, Cochrane and Samuel Bradley, Fen Court, Fenchurch Street, Merchants and Corn Factors. *Whitmore*, Off. Ass.; *Wood & Co.*, Corbet Court, Gracechurch Street. May 14.
- Dare, Thomas, Exeter, Builder. *Pearson*, Essex Street, Strand; *Floud*, Exeter. May 14.
- Dash, Thomas, New Windsor, Berks, Innkeeper. *Gibson*, Off. Ass.; *Ward*, Essex Street, Strand. May 18.
- Day, William, and Thomas Day, Gracechurch Street, London, Oilmen. *Edwards*, Off. Ass.; *Capes & Co.*, Field Court, Gray's Inn. May 18.
- Edgley, James Francis, Mark Lane, London, Wine and Spirit Merchant. *Gibson*, Off. Ass.; Messrs. *Freshfields*, New Bank Buildings. April 20.
- Edisbury, James, Holywell, Flint, Grocer, Tallow Chandler, and Wine and Spirit Merchant. *Smedley & Co.*, Jernyn Street; *Smedley*, Holywell. April 23.
- Eastwood, James, Halifax, York, Innkeeper. *Emmett & Co.*, Bloomsbury Square; *Bennett*, Halifax. April 27.
- Evans, Richard, Liverpool, Stationer, Printer, Bookbinder and Tool Cutter. *Fox & Co.*, Basinghall Street; *Snowball*, Liverpool. May 7.
- Fisher, John, Finabury, Kent, Miller. *Whitmore*, Off. Ass.; *Simmons*, Rochester; *Simpson & Co.*, Farnival's Inn. April 23.
- Fuller, George, Regent Street, Shawl Dealer. *Gibson*, Off. Ass.; *Walters & Co.*, Basinghall Street. May 7.
- Field, Richard, Marton in the Marsh, Gloucester, Corn and Coal Merchant. *Atkins*, Sarsden, near Chipping Norton. May 7.
- Fothergill, Alexander, Rochdale, Lancaster, Cotton Spinner. *Smith*, Chancery Lane; *Shuttleworth & Co.*, Rochdale. May 14.
- Fernyhough, Henry Wilson, Reading, Berks, Book-seller; *Lamb*, Farnival's Inn. May 18.
- Field, Robert, Cartmel, Lancaster, Banker and Money Scrivener. *Wilson & Co.*, Kendal; *Norris & Co.*, Bartlett's Buildings. May 18.
- Goody, Richard, and William Edward M'Kee, Kingston-upon-Hull, Millers. *Walmley & Co.*, Chancery Lane; *Dryden & Co.*, Hull. April 23.
- Granger, Jacob, Newport, Isle of Wight, Southampton, Grocer. *Hicks & Co.*, Bartlett's Buildings, Holborn; *Blake*, Newport. April 27.
- Griffiths, Richard, Newport, Salop, Mercer and Draper. *Pownall & Co.*, Staple Inn; *Walmley*, Wem. May 4.
- Gower, George, Cardiff, Glamorgan, Grocer and Tallow Chandler. *Makinson & Co.*, Temple; *Haberfield*, Bristol. May 11.
- Hicklin, John, Nottingham, Printer. *Campbell & Co.*, Essex Street, Strand; *Fox & Co.*, Nottingham. April 20.

- Hildick, Moore, Walsall, Stafford, Miller. *Miller & Co.*, Piccadilly; *Holland*, West Bromwich. April 23.
- Hetherington, John, King's Arms Yard, London, Wholesale Tea Merchant. *Johnson*, Off. Ass.; *Tanqueray*, New Bread Street. April 27.
- Hayward, Joseph, Manchester, Bookseller and Stationer and Letter Press Printer. *Freeman*, & Co., Coleman Street; *Lycett*, Manchester. April 27.
- Handley, Robert, Rochdale, Lancaster, Tailor and Draper. *Johnson & Co.*, Temple; *Lord*, Rochdale. April 27.
- Heazell, William Baker, Oxford Street, Fishmonger. *Grooms*, Off. Ass.; *Thomas*, Fen Court, Fenchurch Street. May 7.
- Henderson, John, Manchester, Bookseller. *Kay & Co.*, Manchester; *Surr*, Lombard Street. May 7.
- Heginbottom, William, Ashton-under-Lyne, Lancaster, Cotton Spinner. *Milne & Co.*, Temple; *Potter*, Manchester. May 11.
- Higman, William Henry, Bristol, Saddler. *Barkitt*, Currierhall, London Wall. May 11.
- Harris, Ralph, Lower Thames Street, London, Merchant. *Belcher*, Off. Ass.; *Lutty & Co.*, Dyer's Hall, College Street, Dowgate. May 18.
- Higgins, Peter, Salford, Lancaster, Brewer. *Adlington & Co.*, Bedford Row; *Morris*, Manchester. May 18.
- Hayward, James, and Richard Hanks Moore, Paternoster Row, London, Booksellers and Publishers. *Johnson*, Off. Ass.; *Surr*, Lombard Street. May 21.
- Holt, James, and Samuel Holt, Liverpool Glass Manufacturers. *Vincent & Co.*, Temple; *Robinson*, Liverpool. May 21.
- Jenna, George, Hoxton Old Town, and Cumming Street, Pentonville, Middlesex, Patent Water Proof Polished and Enamelled Leather Manufacturer. *Whitmore*, Off. Ass.; *Lindsay & Co.*, Cateaton Street. April 23.
- Jones, William, and Joseph Browning Windle, Liverpool, Merchants. *Mahinson & Co.*, Temple; *Foden*, Leeds. April 23.
- James, James, Ross, Hereford, Grocer. *Park & Co.*, Essex Street, Strand; *Collins*, Ross. April 27.
- Johnson, Ralph, Newcastle-upon-Tyne, Builder. *Cweije & Co.*, Southampton Buildings, Chancery Lane; *Keenyside*, Newcastle-upon-Tyne. May 18.
- Knott, William, Swallow Street, Saint James's, Wine Cooper. *Edwards*, Off. Ass.; *Garrard*, Suffolk Street, Pall Mall. April 27.
- Knowles, John, Henry Rodwell, George Russell Parker, and John Thomas King, Throgmorton Street, London, Silk Brokers. *Turquand*, Off. Ass.; *Crowder & Co.*, Mansion House Yard. May 18.
- Kingsford, John, and Flavius Ebenezer Kingsford, Dover, Kent, Wine and Brandy Merchants. *Lackington*, Off. Ass.; *Dimmock*, Size Lane. May 18.
- Knowles, William, Hyde, Chester, Cordwainer, and Clotheman. *Clarke & Co.*, Lincoln's Inn Fields; *Brooks*, Ashton-under-Lyne. May 18.
- Ledgard, Edward, Mirfield, York, Oil Crusher and Wire Drawer. *Watts*, Dewsbury; *Jaques & Co.*, Ely Place. April 27.
- Lacy, John, jun., Liverpool, Tailor and Draper. *Corrithwaite*, Dean's Court, Doctor's Commons; *Corrithwaite*, Liverpool. April 27.
- Lloyd, William, Hereford, Wine and Brandy Merchant. *De Medina*, Fitzroy Square; *Lanwarne*, Hereford. April 27.
- Leftwich, Thomas, Warrington, Lancaster, Victualler. *Norris & Co.*, Bartlett's Buildings; *Bayley*, Warrington. April 30.
- Loraine, William, Newcastle-upon-Tyne, Banker and Coal Merchant. *Langhorne*, Newcastle-upon-Tyne; *Meggison & Co.*, King's Road, Bedford Row. April 30.
- Livsey, James, Bury, Lancaster, Cotton Spinner and Manufacturer. *Clarke & Co.*, Lincoln's Inn Fields; *Whitehead*, Bury. May 4.
- Linsdell, William, Canon Street, London, Umbrella Manufacturer. *Johnson*, Off. Ass.; *Mullens*, Myddleton Street, Spa Fields. May 21.
- Linsay, Thomas, Lynn, Norfolk, Draper. Messrs. *Sole*, Aldermanbury. May 21.
- Maddox, Joseph, and George Blenkarn, Watling Street, London, Warehousemen. *Hardwick & Co.*, Cateaton Street; *Sale & Co.*, Manchester. April 27.
- More, Mary, King's Road, Chelsea, Middlesex, Florist and Fruit Dealer. *Lackington*, Off. Ass.; *Fawcett*, Jerwin Street, Cripplegate. April 30.
- M'Cleave, William, London Road, Surrey, Linen and Woollen Draper. *Graham*, Off. Ass.; *Catlin*, Ely Place, Holborn. May 4.
- Marshall, William, Liverpool, Ironfounder. *Malaby*, Liverpool; *Chester*, Staple Inn. May 7.
- Millard, John, and Edward Millard, Cheltenham, Gloucester, Upholsterers and Cabinet Makers. *Badham*, Verulam Buildings, Gray's Inn. May 11.
- Mann, James, Norwich, Woolstapler and Manufacturer. *Flower*, Bread Street, Cheapside; *Taylor & Co.*, Norwich. May 11.
- Mallison, William, Blackburn, Lancaster, Merchant. *Milne & Co.*, Temple; *Neville & Co.*, Blackburn. May 18.
- Macaire, John, James Linneman, and Jos. Charles Berger, Liverpool, Merchants. *Chester*, Staple Inn; *Davenport & Co.*, Liverpool. May 21.
- Norrison, Francis, Devil's Bridge, Cardigan, Inn and Hotel Keeper. *Stevens*, Gray's Inn Square; *Perkins*, Bristol. April 23.
- Nelson, Stephen, Sowerby, York, Builder. *Kirk*, Symond's Inn, Chancery Lane; *Holtby*, York. April 23.
- Newall, William, Jun., and Abraham Harrison, Manchester, Grocers. *Hadfield*, Manchester; *Johnson & Co.*, Temple. May 7.
- Northcroft, William, Egham, Surrey, Builder and Brick Maker. *Cannan*, Off. Ass.; *Dyts*, Temple. May 18.
- Noble, John, Leicester, and Joseph Freer, of Huncote, Leicester, Hosiers. *Stone & Co.*, Leicester; *Taylor & Co.*, Bedford Row. May 18.
- Potts, William Radford, Leeds, York, Wool Broker. *Hawkins & Co.*, New Boswell Court, Lincoln's Inn; *Atkinson & Co.*, Leeds. April 20.
- Page, John, St. Alban's, Herts, Auctioneer and Broker. *Turquand*, Off. Ass.; *Roche & Co.*, Charles Street, Covent Garden. April 27.
- Prichard, John Bangley, and James Robins Croft, Liverpool, Oil Merchants. *Adlington & Co.*, Bedford Row; *Littledale & Co.*, Liverpool. May 4.
- Ross, John, Epworth, Lincoln, Sacking Manufacturer. *Tilson & Co.*, Coleman Street; Messrs. *Wells*, Kingston upon Hull. April 23.
- Rutter, John, Stockton upon Tees, Durham, Grocer and Agent. *Smithson & Co.*, Southampton Buildings, Chancery Lane; *Barnes*, Barrow Castle. April 27.

- Redfern, Bartholomew, Birmingham, Gun Maker. *Chilton & Co.*, Chancery Lane; *Suckling*, Birmingham. April 27.
- Rumsey, John, High Wycombe, Buckingham, Money Scrivener. *Cannan*, Off. Ass.; *Car*, Pinner's Hall, Old Broad Street. April 30.
- Roe, Thomas, Coventry, Miller. *Weeks*, Cook's Court, Lincoln's Inn; *Dewes & Co.*, Coventry. April 30.
- Radenhurst, Edward, Birmingham, Glass Chandelier Maker. *Burfoot & Co.*, Inner Temple; *Page*, Birmingham. May 7.
- Reeves, Thomas, and William Reeves, Worcester, Coach Builders. *White & Co.*, Bedford Row; *Corbett*, Worcester. May 7.
- Riley, Ambrose, Wheatley Lane, near Burnley, Cotton and Worsted Manufacturer. *Milne & Co.*, Temple; *Castor & Co.*, Manchester. May 14.
- Rimmer, Richard, Liverpool, Tailor and Draper. *Neal*, Liverpool; *Hall & Co.*, Verulam Buildings, Gray's Inn. May 18.
- Robinson, Robert Wilkin, sen., and Robert Wilkin Robinson, jun., Bedford, Grocers and Tallow Chandlers. *Eagles*, Bedford. May 21.
- Smith, Henry, Doncaster, York, British Wine Manufacturer and Wine Merchant. *Hale & Co.*, Ely Place; *Mason & Co.*, Doncaster. April 20.
- Smith, Prince William, Bristol, Tanner and Currier. *White & Co.*, Bedford Row; Messrs. *Bryan*, Bristol. April 30.
- Skurray, Charles Francis, Swindon, Wilts, Ironmonger. *Frampton*, South Square, Gray's Inn; *Miller*, Frome Selwood. April 30.
- Saunders, Joshua, Cambridge, and of Chesterton, Cambridge, Miller and Corn Merchant. *Ravencroft*, Guildford Street, Russell Square; *Cooper*, Cambridge. April 30.
- Spink, Francis, Bridlington, York, Miller. *Dynclry & Co.*, Bedford Row; *Harland*, Bridlington, May 4.
- Sadler, George, Cheltenham, Gloucester, Linen Draper and Crozier. *Jones & Co.*, Size Lane, London. May 11.
- Toonibs, Charles Lawrence, South Molton Street, Oxford Street, Oil and Colourman; *Abeger*, Off. Ass.; *Pain & Co.*, Great Marlborough Street. April 27.
- Tullitt, John, Liverpool, Bookseller and Stationer. *Carter*, Liverpool; *Taylor & Co.*, Bedford Row. April 27.
- Thelwell, Richard, Manchester, Silversmith. *Neild*, Bond Court House, Walbrook. April 27.
- Topley, James, Greenwich, Kent, Grocer and Cheesemonger. *Cannan*, Off. Ass.; *Rivington*, Fenchurch Buildings, Fenchurch Street. May 4.
- Taylor, Charles White, Epping, Essex, Draper. *Turquand*, Off. Ass.; *Reed & Co.*, Friday St., Cheapside. May 4.
- Thompson, John Harrison, Newcastle, Stafford, Silk Throwster. *Cannan*, Off. Ass.; *Maynard*, Mansion House Place. May 11.
- Toney, Thomas, Birmingham, Draper. *Barker & Co.*, or *Bartlett*, Birmingham; *Holme & Co.*, New Inn. May 14.
- Taprell, Christopher, Bristol, Grocer and Tea Dealer; *White & Co.*, Bedford Row; *Brittan*, Bristol. May 21.
- Vardy, Matthew Wilks, Newbury, Berks, Book-seller. *Graham*, Off. Ass.; *Weir*, Cooper's Hall, Basinghall Street. May 4.
- Ver, Adam, Liverpool, Dryskier. *Willis & Co.*, Tokenhouse Yard; *Johnson & Co.*, Liverpool; *Mortimer*, Manchester. April 23.
- Wood, William, Walsall, Stafford, Publican. *Hunt*, New Boswell Court, Lincoln's Inn; *Marsden*, Walsall. April 23.
- Wardell, William Josiah, Pickering, York, Wine and Spirit Merchant. *Strangeways*, Barnard's Inn; *Peterson*, Pickering. April 23.
- Wright, Edward, Manchester, Commission Agent. *Makinson & Co.*, Temple; *Atkinson & Co.*, Manchester. April 27.
- Worthington, George, Bagillt, Flint, and of Liverpool, Brewer and Slate Merchant. *Taylor & Co.*, Bedford Row; *Holt*, Liverpool. April 27.
- Warren, John, Bolton-le-Moors, Lancaster, Innkeeper. *Chittin & Co.*, Chancery Lane; *Hulton*, Bolton-le-Moors. April 27.
- Wall, Herbert, Mark Lane, and Barnard's Inn, London, Wine Merchant. *Green*, Off. Ass.; *Bentham*, Queen Street, Cheapside. April 30.
- Wetzlar, Alexander, and Julius Wetzlar, Nottingham, Lace Manufacturers. *Hurst*, Nottingham; *Taylor & Co.*, Bedford Row. May 4.
- Wilkins, Henry, and John Wilkins, London Wall, London, and of Pirna, in the kingdom of Saxony, Wool Merchants. *Lackington*, Off. Ass.; *Heathcote & Co.*, Coleman Street. May 7.
- Wetton, William, Coventry, Ribbon Manufacturer. *Beck*, Ironmonger's Hall, Fenchurch Street. May 14.
- Wheeler, Josiah, Bath, Victualler. *Horton*, Furnival's Inn; *Mant & Co.*, Bath. May 11.
- Wynde, John, Leominster, Hereford, Dealer. *Smith*, Chancery Lane; *Hannam*, Leominster. May 21.
- Whittaker, Robert, Bury, Lancaster, Brazier and Tinplate Worker. *Clarke & Co.*, Lincoln's Inn Fields; *Whitehead*, Bury. May 21.
- Wilson, James, Leeds, York, Timber Merchant. *Strangeways*, Barnard's Inn; *Robinson*, Leeds. May 7.
- Williams, William, Bridge, Kent, Brewer. *Servey & Co.*, Canterbury; *Egan & Co.*, Essex Street, Strand. May 7.
- Wake, Thomas Guy, Castle Cary, Somerset, Scrivener; Messrs. *Burfoot*, Temple; *Newman & Co.*, Yeovil. May 14.
- Walter, John, Carburton Street, Fitzroy Square, Cheesemonger. *Edwards*, Off. Ass.; *Humphreys*, Newgate Street. May 14.
- Young, John, Newport, Monmouth, Ship Builder and Shopkeeper. *Hall*, New Boswell Court, Lincoln's Inn; *Prothero & Co.*, Newport. May 11.

PRICES OF STOCKS.

Tuesday, 25th May, 1841.

Bank Stock, div. 7 per Cent.	- - - - -	168
3 per Cent. Reduced	- - - - -	88 $\frac{1}{2}$ a $\frac{1}{2}$
3 per Cent. Consols Annuities	- 90 a $\frac{1}{2}$ a $\frac{1}{2}$	90 $\frac{1}{2}$ a $\frac{1}{2}$
3 $\frac{1}{2}$ per Cent. Reduced Annuities	- 97 $\frac{1}{2}$ a $\frac{1}{2}$	97 $\frac{1}{2}$ a $\frac{1}{2}$
New 3 $\frac{1}{2}$ per Cent. Annuities	- - - - -	98 $\frac{1}{2}$ a $\frac{1}{2}$
Long Annuities, expire 5th Jan. 1860	- - - - -	12 $\frac{1}{2}$ a $\frac{1}{2}$ a $\frac{1}{2}$
Long Annuities for 30 years, expire 11th Oct. 1853.	- - - - -	12 $\frac{1}{2}$ a $\frac{1}{2}$
India Bonds 3 $\frac{1}{2}$ per Cent.	- - - - -	2 $\frac{1}{2}$ pm. a $\frac{1}{2}$ a $\frac{1}{2}$
3 per Cent. Cons. for opp. 15th July 50 $\frac{1}{2}$ a $\frac{1}{2}$ a $\frac{1}{2}$	- - - - -	50 $\frac{1}{2}$ a $\frac{1}{2}$ a $\frac{1}{2}$
Exchequer Bills 1000l. at 2 $\frac{1}{2}$ d.	- - - - -	10 $\frac{1}{2}$ a $\frac{1}{2}$ pm.
Ditto 500l.	do. - - - - -	10 $\frac{1}{2}$ a $\frac{1}{2}$ pm.
Ditto Small	do. - - - - -	12 $\frac{1}{2}$ a $\frac{1}{2}$ pm.

The Legal Observer.

SATURDAY, JUNE 5, 1841.

— “Quod magis ad nos
Pertinet, et nescire malum est, agitamus.

HORAT.

COMMISSION TO AUCTIONEERS.

Mr. Justice *Lawrence* observed, in the case of *Tomkins v. White*,^a that “considering the great sums of money which auctioneers were paid for preparing particulars, and selling estates, they ought to be more correct. They contended some time ago, he added, that they were entitled to have the full sum of 5*l.* per cent. commission, even if a man advertised an estate to be sold by auction, and it was afterwards sold by private contract; and then they contended for half the full commission,” and the same uncertainty as to the proper charge has prevailed down to the present day. Sir Edward Sugden^b says, citing this observation, “The auctioneer is, of course, entitled to a fair remuneration for his labour; the amount must generally depend upon private agreement, although, where there is no special agreement, and there is a particular commission commonly charged, and the seller was aware of the custom, that would undoubtedly, in most cases, be the measure of the allowance. It would be difficult in any case to recover an unwarrantable or exorbitant commission. Upon large sales this difficulty is mostly obviated by making a contract before-hand with the auctioneer. If several land agents are employed to sell an estate, one who finds a purchaser may be entitled to a commission for so doing, although the purchase is made of another of the agents who receives his commission; but the jury are not bound to give what is termed the usual commission for finding a purchaser, viz. 2*l.* per cent. If an agent for sale of an estate is to be paid a per

centage on the sum obtained, he cannot recover his commission until the money is received by the principal. If, therefore, it is paid into the Bank under an act of parliament, by the authority of which the property was purchased, the commission is not recoverable until at least the seller's right to the money is ascertained; and is owing to his wilful default that he has not received it.”

These are the general rules which guide these sales. In the case of *Driver v. Cholmondeley*,^c which was tried in the Court of Queen's Bench before Lord Denman and a special jury at the sittings after Michaelmas Term, 1835, the plaintiffs claimed commission on the sale of property sold by private contract by one of the defendants for 128,500*l.* after the plaintiffs had been employed to sell it. The commission claimed was one per cent. One of the principal points relied on for the defendant was, that, admitting the plaintiffs to have been employed upon the terms of receiving one per cent. as their commission on the purchase-money, the true meaning of the agreement was, that such commission was not to become payable unless the sale was effected by the plaintiffs themselves, and that the agreement for the sale having been made by one of the defendants, the plaintiffs had not become entitled to their commission. The verdict was for the plaintiffs.

In a later case the plaintiff was employed to sell ground rents by auction on the terms of receiving a commission of one per cent. “on sale.” After he had advertized the sale, but before the day of sale, the defendant sold the ground rents by private contract. Three auctioneers proved the custom of the trade to be, that after an auctioneer

^a 3 Smith. Rep. 440.

^b 1 V. & P. 584.

^c 9 C. & P. 559 n.

was employed, and the property advertised by him, he was entitled to the full commission on a sale being effected, although not through his direct agency. Lord Denman, C. J., in summing up, said, — “This is an action for commission on the sale of ground rents; and if you think the plaintiff is entitled to commission, the verdict ought to be for him. If there was an express contract, that could not be varied, but that is not so here, and the plaintiff wishes to engraft on the contract this custom of the trade, by which, on a sale, although not by the auctioneer, the full commission is payable, and the three auctioneers who have been called prove this to be the custom. Now if you are satisfied that those three gentlemen prove a usage so notorious that the party must have known it, then it becomes a part of the contract. If the custom, however, is not so notorious, it would not be engrafted on the contract, and then a fair value only for the plaintiff’s services is to be given, and you will say what is in your judgment a reasonable remuneration, whether 5*l.* 10*s.* or any greater sum. If, however, you think that the witnesses called for the plaintiff have, by their evidence, made out a case of usage so notorious that the defendant was aware of it, then the custom is engrafted on the contract, and the plaintiff is entitled to his commission. Verdict for the plaintiff for the amount of the commission.”^d

The following case also bears on this subject: *A.* and *B.*, land agents, were severally employed to sell an estate for *C. D.*, called on *A.* to inquire after another estate, and was told by *A.* that it was not in the market, but that *C.*’s estate was to be sold. *D.* took from *A.* a particular of the estate, and afterwards meeting *B.*, the other agent, negotiated with him the terms of the purchase, which was afterwards completed. *A.* brought an action against *C.* for commission on the sale, which was proved to be, according to usage, 2*l.* per cent., and payable to the agent who found the purchaser: Held, first, that the question for the jury was, whether they thought that in fact *A.* had found the purchaser; and secondly, that if they thought he had, and gave their verdict for him, they were not bound to give him the full amount of the commission, though the fact of that commission being usually paid was some evidence to guide them in their decision.^e

THE SIXTH REPORT OF THE CRIMINAL LAW COMMISSIONERS.

THE Criminal Law Commissioners have just made their sixth report, in which they consider the law relating to, 1. Treason and other offences against the state. 2. Offences against the Protestant Establishment, declared to be treasons and misprisions of treasons. 3. Libel. 4. Offences against religion. 5. Offences relating to the coin; and 6. Offences relating to the public revenue; and this report contains the law which they propose to be enacted on these subjects. No step has yet been taken, as we believe, to carry the recommendations contained in the previous reports into effect, but we presume this will not be done until the whole of the labours of the Commissioners are completed, which we should suppose will soon be done. We shall have occasion to refer to the other parts of this report again, but at present we shall make some extracts from their remarks on the law relating to treason. After considering the statute of treasons, 25 Edw. 3, c. 1, they proceed to mention some cases relating to “levying war” against the Queen. In the case of *Bradshaw* and *Burton*, which occurred in 1597, (Popham, 122; 2 And. 66; 3 Co. Inst. 10) it appeared that those persons, with others, had agreed to arm themselves, and to go from one gentleman’s house to another, to pull down inclosures generally; and a majority of the Judges agreed that this was high treason against the statute 13 Eliz. c. 1, the words of which are, that if any intend to levy war against the Queen, &c. this shall be high treason; for they all agreed that rebellion of subjects against the Queen had always been high treason at common law. For the statute 25 Edw. 3, c. 1, is, that levying of war within the realm against the king is treason and rebellion, as all the war which a subject can make against the king. But the minority of the judges thought that, as the statute 1 Mar. sess. 2, c. 12, declared it to be a felony if any persons, to the number of twelve or more, assembled themselves to the intent to pull down inclosures, pales, and the like, with force, and continued together, after proclamation according to the statute to go away, by the space of an hour, these actions could not have been then considered treason at common law, else it had been to no purpose to make it felony. And it seemed to them that the resistance ought to be with force to the Queen before that

^d *Rainy v. Vernon*, 9 C. & P. 559.

^e *Murray v. Currie*, 7 C. & P. 584.

such acts shall be said to be treason. But the majority of the judges agreed that if any assemble themselves with force to alter the laws, or set a price upon victuals, or to lay violent hands upon the magistrates, or upon the mayor of London, and the like, and with force attempt to put it in action, that this is rebellion and treason at common law. And they drew a distinction between the cases of pulling down inclosures, pales, &c., comprised in the statute 1 Mar.; for these are to be understood where persons, to the number of twelve or more, pretending any or all of them to be injured in particular, as by reason of their common or other interest in the land enclosed, and the like, and assembling to pull the particular inclosure down forcibly, and not to the cases where they have a general dislike to all manner of inclosures, and therefore the assembling in a forcible manner, and with arms, to pull them down when they have any interest whereby they were in any particular to be annoyed or grieved, is not treason. But in the case of Bradshaw and Burton they thought that the intention, clearly tending to a generality, made the act, if it had been executed, to be high treason by the course of the common law. In *Benstead's case*, Cro. Car. 583, (1640) it was resolved that going to Lambeth House in a warlike manner, to surprise the archbishop, who was a privy councillor, it being with drums and a multitude (as the indictment was to the number of three hundred persons) was treason. In the case of Messenger, Kel. 71, 72, (1668) it was held that a tumultuous rising of 400 or 500 persons, some of whom had clubs and swords, with a green apron borne on a pole for an ensign, led by one with a drawn sword, who cried "down with the bawdy-houses," and proceeded to pull them down tumultuously, and beat a constable who opposed them, was levying war against the king, and high treason within the statute of treasons. Eleven judges, upon full consideration of a special verdict, were of this opinion, contrary to that of Lord Hale, then Chief Baron, who was the only *dissentiente*. Chief Justice Kelyng states their resolution as follows: "This rising with intent to pull down bawdy-houses in general or to break open prisons in general and let out prisoners, and putting their intention in execution by force, in any of these instances, is a levying war against the king, and high treason at common law within the declaration of the statute 25 Edw. 3." Lord Hale gave the following reasons for his dissent from this resolution. 1st. Because it seemed

but an unruly company of apprentices; 2ndly, because the finding "to pull down bawdy-houses" might reasonably be intended of two or three particular bawdy-houses, and the indefinite expression should not, in *materia odiosa*, be construed either universally or generally; 3rdly, because the statute 1 Mar. c. 12, though now discontinued, makes assemblies of above twelve persons and of as high a nature only felony, and that not without a continuance together one hour after proclamation made. The case of *Damaree*, Fost. Disc. on High Treason, c. 2, s. 7, p. 213, (1709) has been considered the leading one on this subject; it is entitled to much greater weight than those which preceded it, as it is not subject to the charges of hasty and unfair dealing, from which some of those which occurred before the Revolution are not exempt. This was, however, a case in which the decisions already alluded to had great influence, having been ruled (according to Mr. Justice Foster) "on consideration of former precedents." The prisoner was the leader of a mob, which during the trial of Dr. Sacheverell, became very riotous in support of his cause and party. They had attended the doctor from Westminster to the Temple, and continued together for some time in King's Bench Walk, crying, among other cries of the day, "Down with the Presbyterians." At length it was proposed to pull down the meeting-houses, and thereupon the cry became general, "Down with the meeting-houses;" and some thousands immediately moved towards a meeting-house in Lincoln's Inn Fields, which they soon demolished, and burnt the pews, pulpit, and other materials. After they had finished at that place, they agreed to proceed to the rest of the meeting-houses; and hearing that the guards were coming to disperse them, they agreed, for the greater dispatch, to divide into several bodies, and to attack different houses at the same time, and many were that night in part demolished, and the materials burnt. The prisoner *Damaree* put himself at the head of a party, which drew off from Lincoln's Inn Fields, and demolished a meeting-house in Drury Lane, and burnt the materials in the street; the mob continually crying they would pull them all down that night. Upon the trial, all the Judges present were of opinion that the prisoner was guilty of high treason in levying war against the Queen;" for here was a rising with an avowed intention to demolish all meeting-houses in general, and this the rioters carried into exe-

cution as far as they were able. If the meeting-houses of Protestant Dissenters had been erected and supported in defiance of all law, a rising in order to destroy such houses in general would have fallen under the rule laid down in *Kelyng* with respect to demolishing all bawdy-houses. But since the meeting-houses of Protestant Dissenters are, by the Toleration Act, taken under the protection of the law, the insurrection in the present case was to be considered as a public declaration by the rabble against that act, and an attempt to render it ineffectual by numbers and open force. *Foster's Crown Law*, p. 213.

NOTES ON EQUITY.

VENDOR AND PURCHASER.

WHEN a report that a person has become a purchaser of an estate is absolutely confirmed, he is entitled to a conveyance on payment of the purchase money, and may, after giving notice of his intention, apply for leave to pay his purchase money into the bank, and to be let into possession of the estate; but this application should of course not be made until the title be approved of, 1 *Sug. V. & P.* 61, 9th ed., and a purchaser will not be allowed to take possession "without prejudice to objections to the title," even upon payment of his purchase money. This has been recently so decided by Lord *Langdale*, M. R., *Hutton v. Mansell*, 2 *Beav.* 260.

CONVEYANCE.

A frequent reference is made in decrees, to the master "in case the parties differ." For the mode of proceeding under this direction, see Lord *Lyndhurst's Orders*, 76, and *Seton on Decrees*, 27. The order is so taken to prevent the necessity of the reference if the parties do not differ. But where there was an infant heir, who was a party to the cause, and a necessary party to the conveyance, Lord *Langdale*, M. R. held, that the words "if the parties differed" ought to be omitted, an infant being interested. *Culvert v. Godfrey*, 2 *Bea* 267.

COSTS OF TRUSTEES.

The same learned judge has also made a decision with respect to trustees, severing their defences so far as costs are concerned, which should be brought under the notice of our readers:—"Where several persons are made defendants in respect of a joint fiduciary character only, or if the beneficial

interest which any of them may have in the matters of the suit is in no way conflicting with their other duty, they certainly ought to answer and defend together; if they do not, and there are no special circumstances, then, according to the settled rule of the court, they will be allowed one set of costs only. On the other hand, if one has a personal interest which conflicts with his duty as trustee, or if one of several trustees can admit facts which the others believe not to be true, it then becomes impossible for them with prudence to answer together. Whether they are entitled to two sets of costs depends on the circumstances of each particular case. If a party creates unnecessary expense, it is just that he should be deprived of his costs: and if several trustees unnecessarily sever their defences, it is right that one set of costs only should be allowed; the question always is, whether there was reasonable ground for them to sever. The previous orders made in this case allowing two sets of costs, have, I think, considerable bearing on the present question; and under all the circumstances I think two sets of costs must in this case be allowed." *Gunn v. Taylor*, 2 *Bea.* 346.

CHANGES IN THE LAW,

IN THE PRESENT SESSION OF PARLIAMENT. No. V.

SLAVE COMPENSATION. 4 *Vict.* c. 18.

An Act to make further provision for facilitating and completing the distribution and payment of Compensation for Slaves upon the Abolition of Slavery.

[18th May, 1841]

1. 3 and 4 *W. 4.* c. 73. Powers of the late commission determined.
2. The treasury empowered to appoint arbitrators to consider outstanding claims for compensation, and certify thereon. 5 & 6 *W. 4.* c. 45. 6 & 7 *W. 4.* c. 5. 6 & 7 *W. 4.* c. 82.
3. Upon receipt of certificate the treasury may authorize the National Debt Commissioners and Accountant General in Chancery to make payments, &c.
4. Power for Lords of the Treasury to award or adjudicate without appointing an arbitrator.
5. Rules of the late commissioners to be conformed to. Awards of the Treasury to be valid, and subject to appeal.
6. Surplus of reserved fund how to be disposed of.
7. Further allowances to claimants for interest or dividends to cease.
8. Treasury may apply interest or dividends to defray expenses.
9. Money remaining to be repaid to the Consolidated Fund; stock to be cancelled.

10. Transfer to the public of all stocks; &c. remaining unappropriated.

The other public acts which have passed since our last list are the following:—

CAP. 13.—An act to authorize the advance of a sum of money out of the Consolidated Fund on account of the colony of South Australia. [10th May, 1841.]

CAP. 14. An act to make good certain contracts which have been or may be entered into by certain banking and other copartnerships. [18th May, 1841.]

CAP. 15.—An act for the erection at Edinburgh of a monument to the late Sir Walter Scott. [8th May, 1841.]

CAP. 16.—An act to enable the Commissioners of Wide Streets to sell, and her Majesty to purchase, certain hereditaments in the city of Dublin, on the north bank of the river Anna Liffey. [18th May, 1841.]

CAP. 17.—An act to abolish arrest in personal actions commenced by process of subpoena at the law side of the Court of Exchequer in Ireland. [18th May, 1841.]

CAP. 19.—An act for raising the sum of eleven millions by exchequer bills, for the service of the year One thousand eight hundred and forty-one. [18th May, 1841.]

CAP. 20.—An act to alter and amend certain laws relating to the collection and management of the duties of excise. [18th May, 1841.]

DISTRIBUTION OF INTESTATE PERSONAL ESTATE IN THE PROVINCE OF YORK.

THE manner of succeeding to personal estate in the province of York, wherein are comprised the bishopricks of Durham, Carlisle, Chester, and Isle of Man, which contain the following counties, viz.: Yorkshire, Nottingham, Durham, Northumberland, Westmoreland, Cheshire, Lancashire, and Cumberland, together with the Isle of Man.*

By statute 4 & 5 W. & M. c. 4, inhabitants of the province of York may dispose of their personal estate notwithstanding the custom, except citizens inhabitants of York and Chester; but see 2nd & 3rd Ann. c. 5, which takes away the restraint.

As to the intestate's estates, that part called the *Death's part*^b is distributed by these acts, but the custom is preserved to the other parts, as formerly, viz.: 22nd & 23rd Ch. 2, c. 10, 1st Jas. 2nd, c. 17, s. 7 & 8.

Death's part—when a wife and children,—is a third part.

When children and no wife; when wife and no children; when wife and child heir or children heirs; when a wife and all advanced—a moiety.

When neither wife nor children, but grandchildren; when a child heir or children co-heirs, or all advanced—the whole.

Widow's part—when a child or children not heirs—a third part.

When a child or children heirs; when no children; when a child advanced and child heir; when all advanced—a moiety.

Child's or Children's part—when a widow—a third part.

When another child heir or advanced all the rest advanced; no other child but grandchildren—a moiety.

Heir at Law has no claim by virtue of the custom, but has a share of that part of the estate of his intestate father called the *death's part*, according to the statute of 22nd & 23rd Chas. 2, c. 10, and 1 Jas. 2, c. 17, s. 7 & 8.

Advanced—and the children advanced in the father's lifetime are excluded by the same custom, and also by the statute 22 Ch. 2, c. 10, save where there are no other children. In which case they each respectively succeed as next of kin. And note, the custom has relation to and affects only widow and children.

Widow—the widow of an intestate succeeds both to her thirds or moiety of the clear surplus according to the custom, and also to her third or moiety of the *death's part* according to the statute, and this she demands in the first place, and before the children can make any claim whatsoever.

Death's part—by 22 Ch. 2, c. 10, the remainder of the said *death's part* is by the said statute distributed equally amongst the said children, share and share alike, including the heir, and the remaining part, called the *child's or children's part*, is by the said custom equally to be divided amongst them, *excluding* the heir.

In part advanced—but the child in part advanced claiming out of this last mentioned part his equal share may put thereunto what he had so received in part into hotchpot, and then the whole is equally to be divided amongst them, by which distribution the shares of all are made equal according to the intent and meaning as well of the statute 22nd Ch. 2, c. 10, as of the custom aforesaid.

A widow, child, or children, none advanced, and no heir. Case 1st—if an intestate die leaving a widow, a child, or children not advanced, no heir, one third is allowed to the widow as her part, share, or thirds due to her by virtue of the custom aforesaid; the other third is due to the said child or children, equally to be divided amongst them as their due filial parts and portions by the said custom; and the remaining third part (the *death's part*) is to be distributed as the statute directs, viz., one third part thereof to the widow, and the remaining two thirds to the said child or children equally.

A widow, children, and an heir.—Case 2d. See the above case.

Widow and one child, heir.—Case 3d. A widow and one child, heir, a moiety to the widow by virtue of the custom, and one-third of the other moiety is due to her by virtue of

* Vide Raymond, 499; 2 Atkins, 115; 1 Comyns Dig. 252; 1 Vernon, 15 and 200; 2 Vern. 169 and 233; Pre. Chy. 2d; Swin. 220-1; 1 Salk. 250.

the statute. The rest to the child by virtue of the statute.

Widow and children, one not advanced, and the rest advanced.—Case 4th. One-third to the widow, residue to the child unadvanced.

Widow and three co-heirs.—Case 5th. A moiety is due to the widow as her share by the custom, and one-third of the other moiety; the rest among the co-heirs.

Widow, one child unadvanced, and one in part advanced.—Case 6th. One-third to the widow as her share by the custom, and one-third of the death's part by the statute; and as to the rest, the child in part advanced must put thereunto what he has received into hotchpot, and then the whole is to be equally divided amongst them, so as to make both shares equal.

Widow and child in part advanced.—Case 7th. A widow and one child in part advanced, one-third to the widow by custom, and one-third of the death's part; the rest to the child.

Widow and one child advanced.—Case 8th. A moiety and one-third of the remainder to the widow, and the rest to the child.

Widow, one child not advanced, one in part advanced, and an heir.—Case 9th. One-third is due to the widow, and one-third of the death's part, the remainder of the death's part equally to be divided amongst all the children, of whom the heir is to be one, by the statute; but as to the remaining part (called the children's part) that child in part advanced must put into hotchpot what he has so received, and then the whole to be divided amongst them. The heir to be excluded from this part by the custom.

Widow, one child in part advanced, and an heir.—Case 10th. One-third to the widow, also one-third of the death's part; the remainder of the death's part to be divided between the children by virtue of the stat. (*which only distributes this part*), and the child's part goes to the child, as the heir has no title thereto.

Widow, one child not advanced, one in part advanced, one heir; grand-children, one advanced, and one unadvanced.—Case 11th. One third to the widow by custom, and one-third of death's part by stat. The remainder of death's part to be distributed by the stat. among the children, heir, and children into four parts, in manner following; viz., one-fourth to the heir and the remaining fourth to grand-children as representatives of their father. But as to the remaining third, called the children's part, that child in part advanced must put what he has so received into hotchpot, and then the whole must be equally divided between the said unadvanced children. (The heir and grand-children, having no right to any share of the children's part by the custom, and the advanced are always excluded, save that the rest has a share in the death's part by statute, although advanced.)

Widow and grand-children.—Case 12th. A moiety to the widow by custom, with a moiety

of the remainder; the rest among the grand-children as next of kin by the statute.

Widow and no children.—Case 13th. Half to the widow, and also half of the remaining moiety; the rest to the next of kin.

Children and no widow.—Case 14th. All equally amongst them, viz., a moiety as their due by custom, and the remaining moiety (the death's part) distributed in like manner by statute.

Three children and one heir.—Case 15th. One moiety amongst them by custom, excluding the heir, and the remaining moiety (including the heir, being the death's part) amongst them also.

One child.—Case 16th. All to such child as next of kin.

One child, unadvanced, and one heir.—Half to child not advanced, by custom, and the remainder equally between them by the statute.

One child advanced and heir.—All to the heir, the child having had his full share, and therefore excluded both by custom and stat.

One child advanced and one unadvanced.—All to the unadvanced for the last-mentioned reason.

One advanced and one advanced in part.—All to the child in part advanced.

One in part advanced and two unadvanced.—All must be put into hotchpot and then equally distributed amongst them.

One child in part advanced, one unadvanced, and an heir.—A moiety being the child's part, excluding the heir, the child in part advanced first putting into hotchpot what he has received, must be equally divided between them, and the other parts, being the death's part, must be divided amongst them, including the heir, by the statute.

Three daughters, co-heirs.—All equally amongst them, as next of kin.

One child, heir, and advanced.—All to him as next of kin, by the statute.

Three children, co-heirs, and one advanced.—All equally divided amongst them by statute, without considering what has been received by one or more during the life of the intestate.

A daughter, grand-children by a son, and heirs unadvanced.—A moiety to the daughter, by custom, and the other moiety, being death's part, is distributed by the statute, in manner following, viz. one moiety to the said daughter, the remainder among the grand-children as representatives of their father.

A father.—All to him as next of kin.

A Mother.—Similiter.

A mother, brothers, and sisters.—All equally amongst them, or to their representatives by the statute.^a

N.B.—No representatives among collaterals after brothers' and sisters' children.

Brothers and sisters and brothers' and sisters' children.—All equally to be divided amongst them, but the children to have shares according to the several stocks or families from which they are derived, and not according to the number of persons.

^a Or dead man's part, that part which formerly went to the administrator, but by 1 Jas. 2, c. 17, is made subject to the statute of Distribution.

Brothers and sister's children.—All equally to be divided among them according to the number of persons, being all of equal degree of kindred.

Grand-father or grand-mother.—All to him or her, there being neither father, mother, brother, sister, widow, children, or brother's or sister's children.

Grand-children.—All equally as next of kin.

Uncles and aunts.—*Similiter.*

Cousins-german.—*Similiter.*

Widow and three children advanced.—One moiety to widow by custom and a third of the other moiety by statute, the rest among the children.

NEW ORDER IN CHANCERY.

PREVENTING TRANSFERS OF STOCK.—COSTS, &c.

Saturday, 3d April, 1841.

IT IS ORDERED, That in all cases where any stocks or funds are or shall be standing in the name of the Accountant General of the Court, to the general credit of any cause, or to the account of any class or classes of persons, and an order shall be made to prevent the transfer or payment of such stocks or funds or any part thereof, *without notice to the assignee of any person or persons entitled in expectancy or otherwise to any share or portion of such stocks or funds*, the person or persons by whom any such order shall be obtained, or the shares of such stocks or funds affected by such order shall, at the discretion of the Court, be liable to pay any costs, charges and expences which by reason of any such order having been obtained shall be occasioned to any party to the cause or any person interested in any such stocks or funds, and henceforward any person presenting a petition for any such order as aforesaid shall *not be required to serve such petition upon the parties to the cause, or upon the persons interested in parts of the stocks or funds not sought to be affected by any such order.*

COTTENHAM, C.

LANGDALE, M. R.

LAUNCELOT SHADWELL, V. C.

QUESTIONS AT THE EXAMINATION, *Trinity Term, 1841.*

I PRELIMINARY.

Where, and with whom did you serve your clerkship?

State the particular branch or branches of the law to which you have principally applied yourself during your clerkship.

Mention some of the principal law books you have read and studied.

II. COMMON AND STATUTE LAW, AND PRACTICE OF THE COURTS.

Rights of Action.

How should a person proceed for the recovery of damages, who has delivered goods to a common carrier to carry and deliver, but which have not reached their destination?

In what way is a stage coach proprietor liable to a passenger travelling by his coach for hurt or injury? and does the same liability extend to common carriers, whether by land, or water, or railways?

In case of injury to a person on the king's highway by job horses on a yearly hiring, not driven by the job master's servant, who is liable for it: and to what extent?

What repairs or dilapidations is a tenant from year to year liable to make good in respect of a messuage so let to him?

Is a landlord or incoming tenant liable to pay the outgoing tenant of market garden ground for his manure, crops, &c., the latter holding as yearly tenant, and whose tenancy is determined by a notice to quit?

If the original lessee in a lease (being under covenant to uphold) covenant to insure against fire, but omit to do so, and having assigned his lease and the premises being burnt down, is the original lessee and the assignee liable to rebuild, or which of them?

How should a person proceed for damages against a wilful trespasser where the damages will be under 5*l.*?

In what way other than by memorandum in writing can a person make himself subject and liable for the debts or engagements of another?

Notice of Trial.

What number of days is sufficient countermand of full notice of trial in country causes, or where the defendant resides more than forty miles from town, and how are the days to be calculated?

When must notice of trial be given for the adjournment day, if the defendant reside more than forty miles from London? and what if he reside within forty miles?

Witnesses.

In what cases can a witness be examined, notwithstanding he may be interested, and how will the judgment in the suit operate for or against him in any subsequent suit?

How are you to enforce the attendance of witnesses before arbitrators, or on commissions?

Amending Record.

How did the 9 Geo. 4, c. 15, commonly called Lord Tenterden's Act, affect amendments on the record, and how has the same been further extended by 3 & 4 W. 4, c. 46, s. 23.

Sheriff.

When several parties claim an interest in goods taken in execution, what steps should be taken by the sheriff, and how will the claimants be affected?

Costs.

What costs is a pauper entitled to if he recover a verdict; and what is he liable to pay if the verdict be against him?

III. CONVEYANCING.

Nature of Property.

What is an advowson?

What is the custom of borough English?

What is the difference between a rent-charge and a rent-seck?

What is an equity of redemption?

Will a chattel interest support a remainder?

Construction.

What is the difference of construction between a deed and a will? and why is the difference made?

Landlord and Tenant.

Is any notice to quit necessary on the expiration of a lease?

If a tenancy continue after the expiration of a lease, without any new agreement, on what terms does the tenant hold?

If in a lease the lessee covenant to keep the premises in repair, except damage by fire or some particular repairs, can he compel the lessor to do the excepted repairs without an express covenant on his part for the purpose?

Conveyance.

By what means are copyhold lands transferred?

What is a feoffment, and is there anything, and if so, what essential to perfect it?

Is it necessary to the validity of a deed that it should in any and what case be read to the parties.

Heir.

What is the difference between an heir apparent and an heir presumptive?

What is the difference between succession *per stirpes*, and succession *per capita*?

Legacy.

What is a vested, and what a contingent legacy?

IV. EQUITY, AND PRACTICE OF THE COURTS.

Process.

What is the process to compel a corporation to answer a bill?

What is the process to compel the appearance of a peer or peeress?

Exceptions.

Within what time must a plaintiff except to the answer of a defendant?

Amendment.

When a plaintiff has sued out an attachment against a defendant for want of answer, can he amend his bill without waiver of the pending proceedings of contempt?

Costs.

Is a defendant entitled to his costs of a bill filed against him for relief and discovery, or for discovery alone; and when is he entitled to costs in either case?

Appeal.

What course is to be pursued by a party who has obtained a decree or order in his favour from the Master of the Rolls or the Vice Chancellor, to prevent an appeal thereupon to the Lord Chancellor?

What must be done in behalf of a party who wishes to appeal to the Lord Chancellor from such a decree or order, to prevent his being shut out from doing so?

Trust.

If money is directed by a testator to be laid out in land for particular purposes, and those purposes should fail of taking effect, does it belong to the heir, or to the next of kin?

Legacy.

Is a legacy to a child adeemed by the subsequent advancement of a smaller portion, or is such subsequent advancement only considered as a satisfaction *pro tanto*?

In what case is a legacy in money to a creditor of the testator, considered in equity to be an extinguishment of the debt?

Chose in Action.

What precaution is necessary on the part of a purchaser of a bond debt, or other *chose in action*, as a protection against subsequent purchasers?

Creditors.

State the order in which debts are payable in a Court of Equity out of legal assets?

What distinction prevails in Courts of Equity in the mode of paying debts out of legal and out of equitable assets?

Mortgage.

What mode of relief does a Court of Equity give to an equitable mortgagee, and in what respect is this relief more extensive and beneficial than in the case of a legal mortgage?

Can title deeds in the hands of an equitable mortgagee by deposit be made a security

(subject to the lien of the depositor) to another person making a subsequent advance of money to the owner of the estate?

V. BANKRUPTCY, AND PRACTICE OF THE COURTS.

Trading.

Is a person who has retired from trade liable to become bankrupt; and in respect of what debts?

Will a single act of buying or selling, constitute a trading under the statute; and if so, under what circumstances?

Act of Bankruptcy.

What is the characteristic feature of the acts of bankruptcy enumerated in the statute, as respects the bankrupt's intention in regard thereto?

Are there any, and if so, what acts of bankruptcy which are involuntary, on the part of the bankrupt?

What circumstances will render a conveyance by the bankrupt of his property an act of bankruptcy? and when will such conveyance be deemed otherwise?

Petitioning Creditor.

What is the necessary amount of the debt of a single petitioning creditor, and how does it differ in other respects from a debt proveable under the fiat?

In what cases must the husband and wife join as petitioning creditors, and in what case may the wife proceed alone?

In what cases can a plaintiff in an action against the bankrupt be a good petitioning creditor, in respect of the debt for which the action is brought?

Proof of Debt.

If a debt is not payable at the date of the fiat, *e. g.* if it consist of a bond or bill for payment of money at a future period, is it admissible to proof, under what provision, and how?

Under what circumstances, if any, will proof of a debt contracted after the act of bankruptcy be admitted?

Can a bankrupt prove against his own estate in any and what case? and what is the course to be pursued?

Property passing.

If a lease contain a covenant that the lessee shall not assign without license, and the lessee become bankrupt, is the title of the assignees affected thereby, on their taking possession without such license, and must any license be obtained for their assigning the lease, and why?

What is the distinction between a mortgage of lands and a mortgage of goods, as to

the same being continued in the possession of the bankrupt?

What is the effect of the appointment of assignees upon the real and personal estates of the bankrupt?

Certificate.

Will the certificate be a bar to a debt contracted abroad, or to a claim of the crown? Give the reasons in each case.

IV. CRIMINAL LAW, AND PROCEEDINGS BEFORE JUSTICES OF THE PEACE.

Nature of offences.

State what constitutes felony in the general acceptance of the English law.

What are the consequences to private persons, who may be present when a felony is committed, if they do not arrest the felon?

State some of the instances of compulsion or necessity, which afford an excuse or justification for an offence.

What kind of presence at the commission of an offence is deemed sufficient to constitute a principal?

Define the offence of perjury.

Can a false declaration, under the act for the abolition of oaths, be prosecuted, and how?

A person received a horse to be agisted, and after a short time sold it; was he guilty of larceny or not, and state the reason?

State some of the instances of misrepresentation, which will be deemed false pretences under the statute for obtaining goods.

Practice.

When a delinquent is arrested, what is the next proceeding to be taken?

In case of a felony being begun in one county and completed in another, where may such felon be tried?

Can an arrest be made on a Sunday for any and what offences?

Infants.

Are there any, and what, offences for which infants are not liable to be punished?

What is the general nature of the evidence which must be adduced to convict an infant?

Accessories.

Who are accessories before, and who after, the fact?

Evidence.

If a person be indicted for corrupting a voter, is it necessary to prove that the bribe was accepted? and is the intention to perform the corrupt contract essential to be proved?

ON THE MODE OF CONDUCTING THE EXAMINATION.

To the Editor of the Legal Observer.

Sir,

Your urbanity to *all* (even the embryo practitioners) who have sought the assistance of your valuable periodical, justly entitles you to the respect of all classes of the profession. Many communications of talent have been inserted in your journal on the *Examination Questions*. The mode of its conduct seems to have taxed in no small degree the ingenuity of your correspondents. Many approve of the present method, while as many more would prefer the ordeal being *vidv voce*.

It seldom occurs that in one office an extensive share of business in every branch of the profession is concentrated. If a good conveyancing practice is possessed with a tolerable share of other business, long and hazardous suits in chancery or frivolous actions at law are never sought after; and, as your correspondent of last week intimates, criminal law and practice in police courts would be spurned. It must therefore be obvious, that no articulated clerk can be thoroughly conversant *from practice* with all departments of the questions. There must be deficiency somewhere; and I have no doubt, from the characters whom I know to have passed, that much of candour and discretion is exercised by the very worthy and learned examiners. To the class of applicants above referred to, I feel convinced that the present mode of examination is most favorable. More time for thought and consideration of the answers is allowed, than could possibly be the case were it taken *vidv voce*. No suspicion of fraud or favor can now attach to any examiner which might occur were the examination taken by the other method. With all deference to the learned examiners, I would respectfully hint the sufficient difficulty of the questions; though at the same time I feel perfectly convinced that no method more just to the profession, nor more favourable to the applicants, has as yet been devised.

I think you will agree with me that with due attention, and a proper modicum of reading during the five years' clerkship, all persons of sound mind, memory, and understanding, will attain sufficient legal lore to bring them through this trying flame unscathed.

ONE WHO HOPES TO PASS.

THE STUDENT'S CORNER.

PREMIUM.—ADVANCES.

A., who had several children, in his lifetime articulated one of them to a solicitor, and paid the usual premium and duty; altogether amounting to a considerable sum. *A.* died a short time afterwards, intestate; and now the question arises, are such payments to be considered as advances under the statute of distributions?

R. C. B.

RENT IN ADVANCE.

Are there any and what decided cases that rent cannot be legally reserved *payable in advance*: as a year's rent to be payable *if demanded*, (or without those words) on the first day of every year, for the whole of that year? Or, in like manner the whole of a current year's rent, to be payable on any given subsequent day of such year, suppose Midsummer day:—Or, in case of a term, the *last year's* rent to be so payable on the first or any other day of such last year?

M. A. J.

PURCHASE.—JOINT TENANT.

About six months ago *A.* and *B.* contracted with *C.* for the purchase of an estate, both signing the agreement and paying the deposit equally. No words of limitation were used in the agreement. *B.* has recently died intestate, leaving an infant heir, and *A.* refuses to take the whole estate and pay the whole of the purchase money. Can the vendor compel *A.* to take a conveyance of the whole of the property, and pay the whole of the purchase money? And could not the infant heir upon attaining majority compel *A.* to convey half of the estate to him upon his advancing half the purchase money that *A.* & *R.* contracted to give for it?

It seems to me that *A.* & *B.* were joint-tenants by the agreement, and consequently that on the decease of *B.* the estate would go to *A.* as survivor, and that the vendor could compel *A.* as such survivor to advance the whole money and take a conveyance of the whole property.

C. E. B.

RULE TO PLEAD.

The question of *T.* in the number of the 3rd of April, whether a rule to plead entered before the delivery of declaration, although on the same day, would be irregular, is expressly answered by the case of *Chapman v. Davis*, 1 Man. & Granger, 388, as well as by a previous case in the Exchequer, *Aikman v. Conway*, 3 M. & W. 71, both of which decide it is not an irregularity.

See also 15 L. O. 127, and *Bennett v. Smith*, 5 Dowl. P. C. 353.

S. P.

TITHE COMMUTATION COSTS.

Who prepares and is entitled to the costs of preparing the engrossments of the three copies of the apportionment for deposit in the bishop's registry, parish chest, and tithe office—the solicitor or the surveyor? What are the generally allowed charges, eight pence per folio, as for deeds? If any one or more of the profession will state the practice, I will (whenever able) return their kindness.

P.

ATTORNEYS TO BE ADMITTED.

Michaelmas Term, 1841.

[*Continued from p. 92.*]

QUEEN'S BENCH.

Clerk's Name and Residence.

To whom article, assigned, &c.

Clarke, Robert Eagle, 8, Jeffries Square; and Thetford.

William Clarke, Thetford.

Coupland, Charles, the yr., 23, Bucklersbury.
Collins, William Hutcheson, 5, Warwick Court; and Ross.

George Frederick Hudson, Bucklersbury.
John Stratford Collins, Ross.

Cooper, James Alfred, Bradford.
Cox, Samuel, Bridgend.

John Reed Wagstaff, Bradford.
Thomas Baverstock Merriman, Marlborough; assigned to W. Hen. Buckerfield, Red Lion Square.

Cottrell, William, 36, Clepstone Street; Great Portland Street; and Birmingham.

Edward Bower, Birmingham.

Day, Alexander, the yr., 1, Southampton Terrace, Pentonville; Milverton; and Taunton.

Edward Amos Chaplin, 3, Gray's Inn Square.

Davis, Walter Hamilton, 2, Belmont Place, Wandsworth Road.

Henry Cope, Agnes Place.

Elton, James William, Putney; and Milverton.
Edmonds, George, Birmingham.

James Randolph, Milverton.
Edward Wright, Birmingham.
Thomas Wigglesworth, Gray's Inn; assigned to Charles Chatfield, Cornhill.

Ellaby, William Francis, 15, Frederick Street.

George Saffery, Market Rasen; assigned to John Nicholson, Market Rasen.

Freer, Thomas, Glamford Briggs.

George Wilson Grove, Exeter.
Shirley Foster Woolmer, 8, King's Road; assigned to Henry William Birch, 8, King's Road.

Fryer, Merlin, Exeter.

Farmer, William Francis, Tudor Street.

Andrew Livett, Bristol.

Fidge, William, 47, Albany St.; and Bristol.
Giddy, Charles, 4, Prince's Street, Red Lion Square; Truro; Islington; and Harpur St.
Gresley, Charles, 7, South Molton Street; and Bristol.

William Hockin, Penzance.

Gem, Thomas Henry, 28, Bedford Place; and Birmingham.

John Welchman Whateley, Birmingham.

German, Andrew, jun., Johnson's Place, Mile End Road.

Henry Moore Griffiths, Birmingham.

Gardiner, William, 7, Wilmington Square; Uxbridge.

Hugh Shield, Queen Street.

Geare, William, 6, Manchester Street, Gray's Inn Road; Exeter; and Lincoln's Inn.

Charles Woodbridge, Uxbridge.

Griffiths, Henry, 14, Gloucester Street.

John Geare, Exeter.

Gridley, Henry Gillet, 28, Jermyn Street.

Ralph Spicer, Great Marlow; assigned to Walter Branscombe, Wine Office Court.

Grant, James, 29, Oxendon Street.

Henry Gridley, Burnham, Westgate; assigned to John Wood, Falcon Square.

Hinde, George, 11, Cowley Street; and Staplehurst.

Patrick Gordon, Symond's Inn.
William Nash Ottaway, Staplehurst.

Hanbury, Oliver Lunn, 53, Upper Berkley St.; Leamington Priors; and Great Russell St.

Henry Lucas, Newport Pagnell.

Hodgson, George, 37, Upper Stamford Street.

Percival Fenwick, Newcastle-upon-Tyne.

Hubbard, Armiger Watiss Ibbot, 35, Wynatt Street.

Augustus Adolphus Hamilton Bethwick, Norwich.

Horn, Richard, 12, Upper Bedford Place; and Durham.

Abraham Story, Durham.

Holmes, John Dickenson, 38, Lincoln's Inn Fields; and Barnard Castle.

Thomas Weldon, Barnard Castle.

Haselwood, Edward William, 14, Sidmouth Street; and Shrewsbury.

Joshua John Peele, Shrewsbury.

Hodges, Edward the younger, Queen Square.
Hall, Giles, 6, Diddington Place, Pentonville; Fumival's Inn.

John Cox, Lincoln's Inn Fields.
Robert Wilton, Gloucester; assigned to Henry Hammond, Fumival's Inn;

Hore, Charles Fredrick, Dulwich; Lincoln's Inn Fields; and Serle Street.

Alexander Fraser, Lincoln's Inn Fields; assigned to James Hore, Lincoln's Inn Fields.

[*To be continued.*]

SUPERIOR COURTS.

Lord Chancellor's Court.

INJUNCTION.—SET-OFF.

An action for damages for breach of contract not to be staid until an account of mercantile dealings between the parties can be taken in a suit in equity. There being no existing cross-demand, there is no ground to set off an expected balance on the account against the apprehended damages in the action. This Court disinclined to advance causes for hearing above others, and will not interfere with the Vice Chancellor's discretion in that respect.

The plaintiff's are merchants in London, carrying on business under the style and firm of Rawson, Holdsworth, & Co. In 1835, they entered into an agreement with the defendant, who was then carrying on business as a merchant in Glasgow, and who by the terms of the agreement was to ship goods on his own account, to the branch houses of the plaintiff's at Canton, Singapore, and other places in the East Indies, such goods to be consigned to the agents of the plaintiffs at the said places; and the plaintiffs on receiving notice from their agents of the goods so consigned to them, were to accept bills drawn on them by the defendant for the prices at which he shipped the goods. From 1835 to 1837, upwards of forty shipments of goods were thus sent out by the defendant, and bills for the amount were drawn by him, and accepted and honoured by the plaintiffs. Some delay took place in the sales of the goods. The defendant sent out other shipments afterwards, to the amount of 26,000*l.*, and drew for their price in due time on the plaintiffs. They refused to accept these last bills, alleging that they were considerably in advance, that the sale of the goods sent out was very heavy, and that the prices charged by the defendant was considerably above the market price. The consequence of this refusal was, that the defendant became embarrassed. He brought an action for damages against the plaintiffs for breach of the agreement, to which he attributed his embarrassments, and he laid the damages at 30,000*l.* The plaintiffs then filed this bill in Chancery, stating the agreement, &c., and praying for an account of the dealings between them and the defendant, and for discovery, and for the production of books of accounts, &c.; and for an injunction to restrain the defendant from proceeding with his action at law. The bill charged, among other things, that if accounts were taken of their dealings with the defendant, the balance would be found to have been in their favour; and that it was part of the agreement between them, that they were not to accept any bills for defendant whenever there was a balance against him. An injunction issued in the first instance for want of answer was afterwards on motion before the Vice Chancellor, extended to stay trial of the action, and an order was made for leave to the plaintiffs to inspect the

defendant's books and accounts in Glasgow, for the purpose of their defence to the action. The time for that inspection, was upon another motion, extended by the Vice Chancellor, on account of the difficulty the plaintiffs had in examining the accounts, having to send persons to Glasgow for the purpose. Upon a motion by the defendant to dissolve the injunction, the Lord Chancellor refused to discharge it altogether, but allowed the action to proceed to judgment, and confined the injunction to the stay of judgment on the verdict. The defendant now appealing from that order, moved for the discharge of the injunction altogether.

Mr. Wigram and Mr. Hull for the defendant, in support of the motion. They said that the object of the plaintiffs was to postpone the judgment at law, which would unquestionably be in favor of the defendant in equity, until a decree could be obtained in the suit in this Court and an account taken, which account these plaintiffs expected to turn out in their favor, and then to set off that balance against the damages at law. But this was not a matter for set off. The action at law was not for any balance of debt due from these plaintiffs to the defendant, but for damages by reason of their breach of contract. There could not be any set-off in such a case; the cause of action and the subject of the equity suit were distinct transactions. They had no doubt that the account in the equity suit would also be in favor of the defendant, but whether that would be so or not, the action at law could not be stayed till the account could be taken.

Mr. Knight Bruce, Mr. Jacob and Mr. Blunt. —There appeared to be a large balance in favor of the plaintiffs on the dealings between them and the defendant. He was now in insolvent circumstances, having compounded with his creditors; and if therefore he were allowed to run away with the fruits of his action, in case the verdict should be in his favor, the plaintiffs would be left without anything to satisfy the balance on the account which would, no doubt, be in their favor. The cases referred to on both sides on the point of set off, are mentioned in the judgment.

The Lord Chancellor having taken time to consider the point, gave his judgment on a subsequent day, to this effect, after stating some of the facts before stated. Both parties claim a balance on the accounts to be taken in the suit in this court: how that may turn out in the result of the cause, was not now material to be considered. The action was for damages alleged by the defendant, the plaintiff at law, to have been sustained by him in consequence of the breach of agreement, which he alleged that these plaintiffs had committed. The Vice Chancellor restrained execution in the judgment at law in the event of the verdict being in favor of the plaintiff at law. The question now is, whether the plaintiff, if he shall succeed at law, shall not be entitled to have the amount of his verdict forthwith. To stay the judgment on the verdict might operate injuriously to the plaintiff, as postponing the

payment of the amount of that verdict until an account might be taken in the suit here. The plaintiffs here could not say that the balance on the account would be in their favor. It was argued that the cause of action and subject of the suit here are the same; but that is not the case; they are very distinct transactions. The question came to this, whether the plaintiff at law was to be prevented from going on to execution till an account could be taken in the suit in equity. If the injunction was to remain, it could not be on the ground of set-off, for against the damages at law, if any should be recovered, any balance against the plaintiff at law, in the accounts to be taken of the mercantile transactions could not be set-off. The grounds for equitable set off are stated in the cases *White v. O'Bryan*,^a *Williams v. Davies*,^b *Piggott v. Williams*,^c *O'Connor v. Spaight*,^d *Brasley v. Darcey*,^e *Lord Cowdor v. Lewes*,^f *Ex parte Stephens*,^g and *Preston v. Strutton*.^h His lordship examined these cases, and said none of them afforded any ground for continuing the injunction. In the present case there was not even a cross demand at present; and there was therefore no equity to prevent the plaintiff at law from recovering what he can in his action. The injunction must be discharged, and the application to continue it, refused with costs.

On a subsequent day Mr. K. Bruce and Mr. Blunt for the plaintiffs, applied to have the cause advanced in the paper for hearing it as a short cause. The Vice Chancellor had refused that application with costs, and this was an appeal from his honor's order. Publication in the cause had passed, and the subpoena to hear judgment had been served and was already returnable. There would be no question for discussion at the hearing, and the decree would be made of course for an account &c., as between merchants. Samuel, the defendant, was in Glasgow, out of the jurisdiction, and having compounded with his creditors he could not pay any costs. In fact he may dispose of all his remaining property pending this suit, unless it should be advanced to a hearing. It was apprehended that a large balance would be found against him.

Mr. Wigram for Samuel, opposed the application. The Vice Chancellor knew all the circumstances of this case, and though he did not take so favourable a view of the defendant's equity as his Lordship did, yet his Honor refused this application with costs. It was premature to hear the cause yet, as some of the goods that had been sent out by Samuel were not yet sold, and when all would be sold and the proceeds remitted to the plaintiffs, the balance would be considerably in favor of Samuel. This application was the last resort of the plaintiffs to shut the defendant out from the benefit of his action, which the plaintiffs had

contrived to delay still, by obtaining a commission to take evidence abroad. It would be to them a great object to push this cause to a hearing before the action could be tried.

The Lord Chancellor said the Vice Chancellor was the best judge of the state of his paper, and this Court would not interfere with his discretion, as to whether a cause ought to be advanced or not. If the application were to advance the cause for hearing in this Court, his Lordship would refuse it to the postponement of other suitors who were previously on the list; to induce his Lordship to advance this cause would require a strong case to be made for taking that step. The motion must be dismissed with costs.

Rawson v. Samuel.—At Westminster, Easter Term, 1841.

Queen's Bench.

[Before the Four Judges.]

EVIDENCE.—CORPORATION.—MISDIRECTION.

A declaration in debt for tolls, described them as tolls due to the mayor and corporation of Chester in respect of all vessels entering and leaving the port of Chester. The evidence went to shew that the water bailiff, through the custom house officer (who actually collected the tolls), had received what was called an "anchorage shilling." Held, that the Judge properly left it to the jury to consider whether this anchorage shilling was not in fact the toll claimed by the plaintiffs.

The corporation being the claimant of this toll, a book coming from the possession of the sheriff, in which he charged himself with the receipt of it, was admitted in evidence to prove the existence of the toll: Held, that as the sheriff charged himself with liability by the entries of the receipt of money for the corporation, such book was admissible in evidence.

The tolls when received appeared to have been appropriated by the water bailiff: Held, that it was properly left to the jury to consider whether he did not so appropriate them by authority of the corporation.

This was an action of debt for tolls, for entering and mooring vessels within the port of Chester. Plea, never indebted. At the trial of the cause, before Mr. Justice Williams, at the last assizes at Chester, it appeared that the plaintiffs did not receive the tolls in question, but that the water bailiff had been in the habit of receiving the toll of one shilling, called an "anchorage shilling." This toll was paid by the owners of all ships coming up the river into the hands of the Chester custom house officer, and the money thus received was divided between him and the water bailiff in equal portions, after the custom house officer had deducted 5 per cent. for the trouble of collection. On this evidence it was objected that the action could not be sustained.

^a 1 Sim. & St. 551. ^e 2 Sch. & Lef. 403.

^b 2 Sim. 461. ^f 1 You. & C. 427.

^c 6 Madd. 95. ^g 11 Ves. 24.

^d 1 Sch. & Lef. 305. ^h 1 Anstruther, 50.

It was contended on the part of the defendant, that in the first place the money was claimed as a toll for entering the port, whereas the evidence shewed that it was paid by the captains of vessels for their anchorage, and when they were about to quit the port. In the next place, the money, if due at all, was shewn to be due to the water bailiff and the custom house officer, and not to the corporation. Then, again, it was objected that evidence had been improperly admitted; for that, in order to prove this claim of toll on the part of the corporation, certain books kept in the sheriff's office, and produced by the sheriff, were admitted in evidence. It was urged that these books shewed that the sheriff had at one time levied the toll, but they shewed nothing more, and went to prove that the right to the toll was in the Crown rather than in the corporation. The learned Judge, however, admitted the evidence, and left it to the jury to say whether they did not think that the evidence of the existence of the toll was clearly made out. The jury returned a verdict for the plaintiffs.

Mr. *John Evans* now moved for a rule to shew cause why the verdict should not be set aside and a nonsuit entered, on the ground that the action was not maintainable, or why a new trial should not be granted on the grounds of misdirection and of the misreception of evidence. He founded his motion on the matters already stated.

Cur. adv. vult.

Lord *Denman* delivered judgment in this case.—This was an action of debt against the master of a vessel, for the purpose of recovering the sum of 1*s.*, claimed from the defendant as toll for entering the port of Chester. The cause was tried before Mr. Justice *Williams*, and a verdict was given for the plaintiff, and a motion was made a few days ago for a new trial on three grounds: first, that some evidence not properly admissible had been received at the trial; secondly, that the Judge misdirected the jury; and thirdly, that the verdict was against evidence. As to the first, it appeared that a book kept by the sheriff, in which were entries made by him and the water bailiff of the receipt of the sum of one shilling, we think that, as in this book the sheriff charged himself with the receipt of money, the book was admissible in evidence. The book is divided into two periods, and describes the receipt of two different sums at these respective periods. In the earlier period the sum of 4*d.*, and in the later the sum of 5*d.* is the amount, with the collection and receipt of which he has charged himself. Then it was contended that, even if admissible, this book was inapplicable to the purpose of maintaining this action, as it shewed that if the right to the toll vested anywhere, it was vested in the Crown, and therefore that this evidence ought not to have been left to the jury for the purpose of proving the right of the corporation; for that it was clear that the sheriff could not be the proper person to receive money payable to the corporation. But, in

our opinion, the possession of this book by the corporation excludes that objection, for if the book was kept for the purpose of making entries as to any branch of the Crown revenue, it is most curious that no account of such receipts should have been rendered to the Crown officers in the Exchequer, and there is no proof whatever that any such account ever was rendered. We think, therefore, that this book was properly left to the jury, with the observations of the Judge. It was also objected that as there was no direct proof (and such was the fact) that the toll was received by the corporation, but that it was collected by the custom house officer, and then paid over to the water bailiff, he, and he alone, was the proper person to maintain the action. But we think that the case was properly left to the jury to consider, whether, in consequence of some previous understanding, the water bailiff did not receive the money in lieu of something that would otherwise be payable to him by the corporation; as, for instance, in lieu of a salary for his services to the corporation. And we think that on that question the jury came to a right conclusion, there being nothing to shew that the bailiff was himself the grantee of the tolls, or received them in respect of any personal right of his own. Then it was said that this was only an anchorage toll, and not such a toll for entering the port of Chester as was described in the declaration. On that point it was stated to the jury, at the trial, that there was no evidence directly to sustain a claim of anchorage toll; but the answer to that objection is, that the learned Judge left it to the jury to consider whether, notwithstanding the name of anchorage toll, it was not established to the satisfaction of the jury that it was in fact a toll payable by vessels on entering and leaving the port of Chester. We think that the case was in this respect also rightly presented to the jury, and consequently that there should be no rule.

Rule refused.—*The Mayor, &c. of Chester v. Beard*, E. T. 1841. Q. B. F. J.

Queen's Bench Practice Court.

JUDGMENT AGAINST THE CASUAL EJECTOR.—NOTICE.—DATE.

Where a declaration in ejectment is served in Easter Vacation, and the notice required the tenant to appear in the next Easter Term, it was held a sufficient service for a rule nisi for judgment against the casual ejector, the declaration being entitled of Easter Term.

Fortescue moved for judgment against the casual ejector. The affidavit on which he applied stated that the service of the declaration had been effected during the vacation of Easter Term, and the notice was dated on the 13th May, in Easter Vacation. The declaration itself was entitled in Easter Term. The notice required the tenant to appear in the next Easter Term. It was submitted, that as the tenant

could not be aided by the notice, although the service was effected after the term in which the tenant was required to appear, it was sufficient to authorize the Court to grant a rule nisi, for judgment against the casual ejector.

Coleridge, J., thought enough had been done to warrant the granting a rule nisi.

Rule granted.—*Doe d. Combes v. Roe, T. T. 1841. Q. B. P. C.*

ERROR CORAM NOBIS.—ALLOWANCE.—
BAIL IN ERROR.

If a party sues out a writ of error coram nobis, it is not necessary within the statutes to give bail in order to obtain the allowance of the writ.

In this case an action had been brought, and judgment obtained. The defendant afterwards sued out a writ of error coram nobis. When it was produced to the Master for the purpose of allowing it, that officer felt some doubt whether bail should not be given as a condition precedent to the allowance.

W. H. Watson now contended, that it was perfectly clear on examining the language of the 3 Jac. 1, and 6 G. 4, which was in *paria materid*, no bail was required. The decisions on these statutes were in conformity with that view, and therefore the defendant was entitled to have his writ allowed without giving bail.

Wightman, J., was of opinion that the party was entitled to have the writ of error, it being error coram nobis, without giving bail, and therefore the Master must allow it accordingly.

Rule accordingly.—*Rawlins v. Thynne, T. T. 1841. Q. B. P. C.*

ARBITRATION.—COSTS.—EVENT OF CAUSE.—
AWARD.—EXCESS OF AUTHORITY.—STET
PROCESSUS.

If an arbitrator, without authority, directs a stet processus, but disposes of the cause in pursuance of the submission, the directions as to the stet processus may be discarded, and the award allowed to stand good as to the rest.

This was an action of detinue, to recover possession of certain deeds. A variety of special pleas were pleaded, and different issues raised upon them. When the cause came on for trial, it was suggested to be desirable that it should be referred to a gentleman at the bar. It was accordingly referred, and the reference proceeded. The order of reference directed in the usual form that the costs of the cause should abide the event, and the costs of the arbitration and award be in the discretion of the arbitrator. The arbitrator awarded on all the issues, and although no power for that purpose was given by the order of reference, he awarded a stet processus.

Mellor now moved to set aside the award, on the ground that the arbitrator had exceeded his authority. So long as that excess of authority remained on the face of the award, no taxation of costs could take place, as it could

not be said that there was any legal event to the cause. It was therefore incumbent on the parties that the award should be set aside.

Coleridge, J., thought that the arbitrator, by disposing of each issue respectively, had found a sufficient legal event of the cause to enable the Master to proceed with the taxation of costs. As to the stet processus, although a clear excess of authority, it might be discarded, and the remainder of the award allowed to stand. There was consequently no ground for disturbing the award.

Rule refused.—*Ward v. Hall, E. T. 1841. Q. B. P. C.*

EJECTMENT.—JUDGMENT AGAINST THE
CASUAL EJECTOR.—FOREIGNER.—INTER-
PRETER.

If a tenant in possession is a foreigner, service may be effected on him, and the usual explanations given through the medium of an interpreter.

In this case, which was an action of ejectment, the tenant in possession was a Spaniard, and was unacquainted with the English language. When service was effected on him, the declaration was read over to him, and through the medium of a servant of the tenant, who acted as an interpreter, its object was explained. The tenant then referred the party serving the declaration to his solicitor, at the same time giving that gentleman's name and address. The declaration was then left with the tenant.

Lush now moved for judgment against the casual ejector, and submitted that as the copy was left, accompanied by the interpreted explanation, he was entitled to a rule absolute for judgment against the casual ejector.

Wightman, J., thought the lessor of the plaintiff entitled to judgment against the casual ejector.

Rule granted.—*Doe d. Cuttill v. Roe, T. T. 1841. Q. B. P. C.*

JUDGMENT AGAINST THE CASUAL EJECTOR.—
PARTNERS.—SPECIAL SERVICE.

If several persons, partners, are in possession of premises sought to be recovered in an action of ejectment, and there is one member of the firm who is the acting partner, the declaration in ejectment may be served on that partner.

In this case there were several tenants in possession of certain premises; among them, a firm consisting of four partners. An action of ejectment having been brought to recover possession of those premises, the declaration in ejectment was served on the acting partner in the firm on the premises.

C. Clark now moved for judgment against the casual ejector.

Wightman, J., granted the rule, absolute in the first instance.

Rule granted.—*Doe d. Overton v. Roe, T. T. 1841. Q. B. P. C.*

Queen's Bench.*Trinity Term, 1841.—4th Victoria.*

1st June, 1841.

This Court will, on Monday, the 14th day of June instant, and five following days, hold sittings, and will proceed in disposing of the business in the *Special Paper, Crown Paper, and New Trial Paper*, and will give judgment in cases which shall then be pending.

By the Court.

Sittings after Trinity Term, 1841.

MIDDLESEX.	LONDON.
<i>Common Juries.</i>	Adjournment day,
Monday June 14	Monday, June 28
to Tuesday 22	<i>Common Juries.</i>
(both days inclusive.)	Monday June 28
<i>Special Juries.</i>	to Saturday, July 23
Wednesday .. June 23	(both days inclusive.)
to Saturday 26	<i>Special Juries.</i>
(both days inclusive.)	Monday July 5
	to Saturday 10
	(both days inclusive.)

Exchequer of Pleas.

MIDDLESEX.	
Monday .. June 14	Common Juries.
Tuesday 15	{ Customs, Revenue Causes
Wednesday 16	and Common Juries.
Thursday 17	Excise.
Friday 18	{ Common Juries.
Saturday 19	
Monday 21	{ Special and Common Ju-
Tuesday 22	ries.
Wednesday 23	

LONDON.

Tuesday .. June 15	To Adjourn only.
Thursday 24	{ Adjournment Day. Com-
Friday 25	mon Juries.
Saturday 26	{ Common Juries.
Monday 28	
Tuesday 29	{ Special and Common Ju-
Wednesday 30	ries.
Thursday .. July 1	
Friday 2	{
Saturday 3	"
Monday 5	{ Common Juries.
Tuesday 6	
Wednesday 7	

The Court will sit at half-past nine o'clock.

LAW BILLS IN PARLIAMENT.**House of Lords.**

For holding Petty Sessions and Summary Trials.

[In Committee.]

Earl Devon.

To limit the Criminal Jurisdiction of the Quarter Sessions.

[For 2d reading.]

Tithes Recovery.

[For 2d reading.]

Double Costs, &c.

[For 2d reading.]

To amend the Law of Principal and Factor.

House of Commons.

For facilitating the administration of justice (in Chancery), No. 1. Attorney General.

[For 3d reading.]

To facilitate the Administration of Justice in the House of Lords and Privy Council, No. 2.

Sir E. Sugden.

[In Committee.]

County Courts.

Mr. F. Maule.

[To consider Report 7th June.]

Bankruptcy, Insolvency, and Lunacy.

[In Committee.]

To remove objections to the admission of evidence on the ground of interest.

[In Committee.]

Mr. C. Buller.

To allow Writs of Error in *Mandamus*.

Sir F. Pollock.

[In Committee.]

Poor Law Amendment.

[In Committee.]

For the Registration of Parliamentary Electors.

[In Committee.]

Lord John Russell.

For the better regulation of Railways.

[In Committee.]

Mr. Labouchere.

County Coroners' Election.

[In Committee.]

Mr. Packington.

Drainage of Lands.

[In Committee.]

Copyhold and Customary Tenures.

[Passed.]

Mr. Hope.

Administration of Justice in Boroughs.

[In Committee.]

Attorney General.

To facilitate the Transfer of Real and Personal Property held in trust for Charitable Purposes.

[For 3d Reading.]

Mr. James Stewart.

Designs Copyright.

[For 2d reading.]

[For 2d reading.]

To appoint a Public Prosecutor.

[For Select Committee.]

Mr. Ewart.

To exempt Tithes from Parochial Assessments.

[In Committee.]

Mr. Hodges.

Middlesex Sessions.

[In Committee.]

County Bridges.

[In Committee.]

Punishment for Offences against the Person.

[In Committee.]

Lord J. Russell.

Punishment for Embezzlement.

[For 2d reading.]

Lord J. Russell.

To amend the Law of Sewers.

[For 3d reading.]

Enrolment of Burgesses.

[In Committee.]

Turnpike Acts Amendment.

[In Committee.]

Stamp Duties on Law Proceedings.

[Passed.]

Costs in frivolous Suits.

[For 3d Reading.]

THE EDITOR'S LETTER BOX.

The letters of "A Country Subscriber;" T. G.; "A Constant Reader;" J. B. A.; J. C. A.; Z. Y. X.; and "A Young Student," have been received.

The Legal Observer.

SATURDAY, JUNE 12, 1841.

——— “Quod magis ad nos
Pertinet, et nescire malum est, agitamus.

HORAT.

THE COPYHOLD COMMUTATION ACT.

BELIEVING that the Copyhold Act will have passed through all its stages before this number of our work reaches our readers, it may be well to call their attention to some points in it, which, as the act comes into operation from the date of its passing, it is as well they should know, as they may require immediate attention.

The first is, that by s. 6, the Copyhold Commission is only to last for five years, “and thenceforth until the end of the then next session of Parliament.” The provisions of the act must, therefore, be acted on forthwith. As the bill came from the Lords, the commission was to last for ten years, but it was thought, we believe, by the friends of the measure in the House of Commons, that this might encourage supineness in acting under its provisions, and its duration was thus reduced to five years. Whether the commission will be renewed at the end of that period must depend on the benefit derived under it, and the amount of business transacted by it.

The next point is, that by s. 20, the commissioners are to frame and circulate forms of notices and agreements, and such other instruments as in their judgment will further the purposes of the act, and supply all or any of such forms to any person or persons requiring the same, or to whom the commissioners shall think fit to send the same for the use of any lord or copyholder, or other tenant desirous of putting the act into execution.

It will be observed that any lord or lords of any manor, whose interest shall not be less than one-fourth of the whole annual value of the manor, or any tenants of any manor to the number of ten, or if there

shall not be ten, then one-half of the tenants of the manor, may call a meeting to effect a commutation, at which meeting the lord and three-fourths in number, and three-fourths in value shall bind all, (ss. 13 & 14.) The 14th clause provides the terms on which the agreement may be made; and, among other things, the agreement may “fix a scale of fees to be payable to the steward from and after the confirmation of the apportionment; but so nevertheless as not to affect the interests of any steward in office at the time of the passing of this act, who shall hold his office for life or good behaviour, or of any steward of a manor, so in office as aforesaid, where the usage shall have been such as in the opinion of the said commissioners to lead to a just expectation that the steward will hold his office during his life or good behaviour.”

By s. 39, the commissioners may hear and determine disputes touching the right to, or amount of, any fines or manorial payments or incidents (except mines or minerals); subject, however, to appeal by issue at law, or a case stated (s. 40.)

Perhaps, however, the most important clauses in the whole act for immediate consideration are, ss. 52 and 56, which authorize individual commutation and enfranchisement by any lord, whatever may be his estate or interest in the manor. To these we direct the particular attention of our readers.

The latter we shall now give verbatim:—
“And be it enacted that for the purpose of enabling lords and tenants of manors to effect either general or partial enfranchisements, it shall be lawful for the lord of any manor, whatever may be his estate or interest therein, with the consent of the said commissioners under this act, at any time or times after the passing of this act, to enfranchise all or any of the lands holden of his manor, in consideration of such sum or sums of money, whether pay-

able forthwith or at a future time, as shall be agreed to be paid by the tenant or tenants whose lands are to be enfranchised; and it shall be lawful for any tenant, whatever may be his estate or interest, with the like consent of the said commissioners under this act, to accept such enfranchisement on the terms so agreed on; and whenever so many as twelve persons being tenants, or all the tenants of any manor, shall at the same time agree with the lord for the enfranchisement of their lands, then it shall be lawful to effect such enfranchisement, by a schedule of apportionment which shall have been specially agreed upon between the lord and tenants, and where none such shall have been agreed upon, then by a schedule of apportionment to be prepared by the steward, and delivered by him to the said commissioners, such schedule to be in either case afterwards confirmed and sealed by the said commissioners, and such schedule shall state the sums to be paid for enfranchisement by the several tenants, or charged on their respective lands, and the periods of the payment of the principal money respectively, or the commencement of interest, either pursuant to some apportionment to be made by the valuers to be appointed by the lord and tenants, parties to the agreement, or as shall seem just to the said commissioners, having regard to all the circumstances of the case; and where any compensation shall have been agreed to be paid to the steward or other officers of the manor for the loss he or they may sustain by such enfranchisement, which compensation shall in all cases be provided for where a steward shall hold his office by patent or other instrument for the term of his life or during good behaviour, or where in the absence of such patent or other instrument, the usage shall have been such as in the opinion of the said commissioners to lead to a just expectation that the steward will hold his office during life or good behaviour, the schedule shall contain an apportionment of the sum agreed to be paid, and every such schedule shall contain all such matters as shall be requisite for carrying into effect the provisions of this act, and all the provisions hereinbefore contained for carrying into execution a commutation apportionment, made by valuers, shall so far as the same are capable of application, be deemed and taken to be applicable to the case of an enfranchisement under the provisions herein contained, save that the said commissioners shall not make any alterations or amendments in such schedule without the consent of the parties interested therein: Provided always that whenever the estate of any party to such enfranchisement shall be less than an estate of fee-simple in possession, or corresponding copyhold or customary estate, notice in writing shall be given by or on behalf of such party or the person entitled to the next estate of inheritance in remainder or reversion, in the manor or land to be affected by such enfranchisement, so that the assent or dissent or acquiescence of such person entitled in remainder or reversion, may be stated in writing to

the said commissioners, when such a schedule of apportionment as aforesaid, or when such conveyance deed or assurance as hereinafter mentioned, shall be sent to them, but the said commissioners shall notwithstanding cause such further notices to be given, and such other enquiries to be made as they shall deem fit before confirming such apportionment, or consenting to such conveyance deed or assurance. Provided also that in case the person so next entitled in remainder or reversion as aforesaid, shall be a minor, idiot, lunatic, feme covert, or under any other legal disability, or shall be beyond the seas, such notice as aforesaid, shall be given to the guardian, trustees, committee of the estate, husband, or attorney of such person respectively; or in default thereof or in case the person so entitled shall be unknown or not ascertained, then such notice shall be given to some person, to be nominated for that purpose by some writing under the hands and seal of the said commissioners, after due inquiry shall have been made by them as to the status of such person, to judge of the propriety of assenting to or dissenting from any such agreement; and that in every case in which dissent in writing shall have been expressed, the commissioners shall withhold their confirmation of the apportionment, or their consent to the conveyance deed or assurance hereinafter mentioned, until upon further inquiry they shall be satisfied that the agreement is not fairly open to objection."

The other clauses that are of immediate importance are those by which the copyhold tenure is improved. Thus by s. 79, after confirmation of the apportionment in cases of commutation, the customary modes of descent are to cease, and the lands to descend and to be subject to dower and curtesy in like manner as freehold lands, except that the custom of gavelkind, as it exists in the county of Kent, is not to be altered or affected (s. 80). By s. 85, Courts of Equity may decree a partition of lands of copyhold or customary tenure. By s. 86, lords of manor, or their stewards, may after the passing of the act, hold customary courts, although no copyhold tenant be present. By s. 87, lords or their stewards may make out of the manors and out of Court, grants of lands to be held by copy of court-roll. By s. 88, lords or their stewards may grant admissions out of the manors and out of court. By s. 89, every surrender delivered to the lord or steward, and every fact proved to the lord or steward at any court whereat a homage shall not be assembled, shall be forthwith entered on the court-rolls; and by s. 90, presentment by the homage shall not be essential to the validity of an admission. We shall shortly return to this act.

PRACTICAL POINTS OF GENERAL INTEREST.

NEGLIGENT DRIVING.

If a servant driving his master's cart on his master's business, make a detour from the direct road, for some purpose of his own, his master will be answerable for any injury occasioned by his careless driving while so out of his road. But if a servant take his master's cart, without leave, at a time when it is not wanted for the purpose of business, and drive it about solely for his own purposes, the master will not be answerable for any injury he may do. *Joel v. Morrison*, 6 C. & P. 501. In the case of *McManus v. Crickett*, 1 East, 106, it was held that a master is not liable for the wilful act of his servant in driving his carriage against another, without his direction or assent, but only for damage arising from the unskilfulness of the servant when acting in his employ. This latter decision does not seem inconsistent with the doctrine laid down in *Joel v. Morrison*, and that case has been recently fully confirmed under the following circumstances, as detailed by the servant by whom the injury was committed. "I drove my master to Great Stamford Street; my orders were, to put up at the Red Lion in Castle Street, Leicester Square, and meet my master at the Olympic theatre. I went into Old Street Road on business for myself; I took a parcel for my wife to her father and mother; I was driving at a slow pace in Old Street Road; at a pace not exceeding four miles an hour. I called to the woman three times distinctly, as loud as I could; she took no notice. I pulled up immediately when I found she took no notice; the horse was walking then; her back was turned, and I suppose the shaft of the vehicle struck her on the shoulder; somebody seized the horse by the bit, and he reared on his hind legs, and backed; I was sitting low at the time. I went to the old woman, and offered her a recompense of 5*l.*; she said she could do nothing with it; I must speak to the gentleman. I went to him, and he said he would speak to the party, and I heard nothing more about it. A friend gave me the money." On his cross-examination, he said, "I do not know that that money came from my master; it was a friend at Turnham Green. I did not go to the old woman by my master's desire; the only conversation I had with my master before I went was being scolded for going out of my way; the name of the person I got the

money from was Barnett; he is a gentleman, a lawyer; as far as I know, he is my master's lawyer. When I came back, I gave the money back to Mr. Barnett; it was dusk when I was in the Old Street Road; I saw an object as I was driving, it had a cloak on; I was quite pretty nearly at a stand-still, when she ran herself against the shaft; she came in contact with the shaft. I was pulling up at the time; her back was towards the horse; she was looking a contrary way, and then she fell down; I suppose she fell down from fright. I got to the Red Lion about half-past seven; I went there the direct road from Old Street Road; I had lived with the defendant about a year and a half at the time, and lived with him about nine months after." In answer to questions from the Judge, he said: "My master did not know anything about my having the parcel to deliver. I left the carriage in a yard at the corner of Old Street Road, by Shoreditch, while I went to Bateman's Row with the parcel; this was about 200 yards from the place where the accident happened." On these facts, Serjeant *Wilde*, as counsel for the plaintiff, laid down the law to be this. "If you give your servant the care and controul of your carriage and horses, and tell him to take the carriage to a given place, you place the carriage under his controul as to the mode in which he is to arrive at that place, and for his conduct in the course of the execution of that order you will be responsible." This law was adopted by Mr. Justice *Erskine*, who held that the master was, under the circumstances, responsible for his servant's act. *Heath v. Wilson*, 9 C. & P. 607.

THE DISSOLUTION.

PARLIAMENT will probably be dissolved some day next week, and on such occasions we have only one feeling, *viz.* that the interests of the profession may be properly represented. In our next number we shall probably collect the names of the various legal candidates on either side, and so impartial are we in the matter, that we sincerely say we wish them *all* success. We have "stomach for them all." We have the satisfaction of seeing, that whether in eloquence or in learning—whether in knowledge of principle or of details, the lawyers in the House of Commons invariably carry off, when they please, the highest honours. Look at Sir W. Follett and Mr. Pemberton on one side, and the Solicitor General and Serjeant Talfourd on the other—not to men-

tion many others; and we shall find that, whether in debate or in the severer labours of legislation, but little is done without legal light and help. The more law, therefore, in our opinion, the better: it serves at once for the substance and the garnish of the dish.

MEMOIR OF JONATHAN BRUNDRETT, Esq.

THE subject of this memoir affords a striking example of the beneficial effects of great perseverance, firmness, and integrity. The profession, indeed, furnishes numerous instances of men of humble origin raising themselves to eminence by their industry and unremitting application. In some cases the individual is distinguished by great frugality, not to say parsimony, and after surmounting the first difficulties in life, independence and wealth are rapidly attained. In the instance, however, which we have to bring under review, the individual was not remarkable, at any time of his career, either in youth or age, for anything approaching to penuriousness. On the contrary, he enjoyed the good things of this life as well as most people, and was not only well known for his hospitable conduct, but for many instances of great liberality.

The gentleman to whom we refer in the preceding remarks was Mr. BRUNDRETT, an eminent solicitor in the Temple. He was born at Altrincham, in the county of Chester, on the 21st of June, 1770. His parents were in humble life, and his education was rather limited. He was articled at the age of fourteen, for the term of seven years, to the late Mr. Nathaniel Milne, an eminent solicitor at Manchester, and one of the coroners for the county of Lancaster. After serving his full period, he came to London, and was admitted an attorney of the Court of King's Bench on the 24th of November, 1791. At that time he resided in chambers in Gray's Inn.

He was admitted in the Court of Common Pleas on the 10th February 1794, and on that occasion an incident occurred which may be deemed somewhat characteristic. Although, as we have said, Mr. Brundrett was very liberally disposed, he had a great antipathy to every thing which he considered to be imposition. The officer of the Court had been paid a small fee on the admission, but refused to deliver the usual memorial or certificate without receiving some other fees, which Mr. Brundrett considered contrary to the authority of the 22d Geo. 2, c. 23, s. 2. He therefore resisted the

claim, and upon an affidavit of the facts, obtained a rule for the officer to show cause why he should not deliver the certificate of admission. The officer did not think proper to argue the point, and the rule was made absolute with costs. We believe, however, that Mr. Brundrett, having gained his point, never enforced his right to the costs.*

Mr. Brundrett's habits of business, and zeal and energy of character, soon brought him into notice. For many years after his admission he acted as managing clerk of the late Thomas Lowten, Esq., of the Temple, well known as the clerk of the *Nisi Prius* Court in the time of Lords Mansfield, Kenyon and Ellenborough. The duties of his official appointment occupied a considerable portion of Mr. Lowten's time, and his large and important private business was principally conducted by Mr. Brundrett.

In the year 1807 Mr. Brundrett was engaged in an affair, which created some public sensation, relating to the election of members in parliament for the borough of Poole. In those days the writ was frequently delivered to one of the solicitors engaged in the election. In this instance it was alleged that Mr. Lowten or Mr. Brundrett had received and not delivered the writ in proper time to the returning officer, but detained it for some electioneering purpose. The following statement on this subject has been abridged from the Journals of the House of Commons:—

On the 16th July, 1807, a complaint being made to the House of a delay in the execution of the writ issued on the 29th day of April last, for the election of burgesses to serve in parliament for Poole, the messenger attending the great seal was called in and examined. He informed the House that he received the writ on the 30th of April, a little after twelve, and before two delivered it to Mr. Jonathan Brundrett, whom he understood to be the head clerk of Mr. Lowten, attorney at law, and that he gave it to him with a view to expedite the writ as quickly as possible. The House then ordered that Mr. Brundrett should attend the House the next day, and Mr. Lowten was also ordered to attend.

On the 17th Mr. Brundrett was called in and examined, and having refused to answer a question that was put to him, it was resolved that he was thereby guilty of a high breach of the privileges, and a contempt of the authority of the House, and it was ordered that he should be committed to his Majesty's goal of Newgate.

In the course of a few days, viz. on the 20th July, Mr. Brundrett thought proper, or was advised to present a petition assuring the House that his refusal to answer the question,

* We noticed this case in our 1st Vol. p. 409.

and to make the disclosure required of him, did not arise from any disrespect to the House, or disregard of its jurisdiction, but from a general sense of professional fidelity to his employers; and he assured the House that he was in no wise instrumental in delaying the execution of the writ, he having delivered it to the person by whom he was employed in a very few hours after he received it from the messenger to the great seal; and stating that he was willing to submit himself to such examination as the House might think fit, urging that the commitment was attended with consequences highly detrimental and injurious to him in his professional business.

Upon this it was ordered that Mr. Brundrett should be brought to the bar of the House, and on the 21st July he attended accordingly, and was ordered to be discharged out of custody. On a subsequent day, the 28th, Mr. Brundrett again attended with a Mr. Spurrier. They were severally examined, and it appearing to the House that Mr. Spurrier had obtained the writ from Mr. Brundrett on the 30th April, and had unduly detained it until the 17th May, before he delivered it to the sheriff; it was resolved that Mr. Spurrier was thereby guilty of a breach of the privileges of the House, and it was ordered that Mr. Spurrier, for his offence, should be committed to the custody of the Serjeant at Arms. Mr. Spurrier succeeded in pacifying the House, and was soon afterwards discharged.

We may add to this public incident in the life of Mr. Brundrett, that in politics he was "a Whig and (perhaps) something more." His commital to Newgate during the Government of the opposite party, probably tended to strengthen his political feelings, and some of his munificent bequests may possibly be traced to this origin.

Pursuing his honourable course for several years as the confidential and able manager of Mr. Lowten's practice, Mr. Brundrett's merits at length procured that end to which he had, doubtless, looked forward—a partnership with Mr. Lowten, which took place in 1812, and the firm then consisted of Mr. Lowten, Mr. Brundrett, Mr. Wainwright, (a nephew of Mr. Lowten) and Mr. Spinks. In January 1814, Mr. Lowten died. It is not material to notice the several partnerships which were formed since that period; but we shall take occasion presently to introduce an honourable testimonial towards the partners engaged with Mr. Brundrett at the time of his death.

Having risen by his own energy to the head of one of the principal professional firms, Mr. Brundrett most laudably assisted in promoting the objects of all the Law Societies which were projected during his time. The first was the Metropolitan Law Society for promoting fair and honourable practice, established in 1819. Of this he

was a director, and devoted much of his valuable time in attending its meetings.

On the formation of the Law Life Assurance Society in 1823, he was most actively engaged, and rendered much service in its establishment. On the choice of directors, he stood fourth on the list of twenty-four, having polled 884 votes,—the highest member being 950. He was invariably punctual in his attendance at the weekly board of that Society, and at its various committee meetings, and aided its objects by his professional influence.

Mr. Brundrett was also one of the earliest promoters of the Law Institution. He attended the first meeting, which took place in March 1825, and was one of the Provisional Committee, and subsequently elected by the general body as a member of the Committee of Management, and from time to time re-elected both before and after the charter of the Society, and continued one of the Board down to the time of his death. He was also one of the four trustees of the estates of the society. He was very rarely absent from any of the committee meetings, except during occasional illness, and for the last few months of his life. Those who know the difficulty of securing the attendance of able men of business in forming the *quorum* of a committee, will appreciate the value of Mr. Brundrett's regularity. He was one of the few members who subscribed 500*l.* at the commencement of the Institution, when a certain sum was requisite to carry its objects into effect. He was also a liberal donor to the library. It was no small credit to be thus selected by the members of the profession to carry out the objects of two such societies, as the Incorporated Law Society and the Law Life Assurance Society. Success beyond the most sanguine expectation has attended the exertions of the directors of those associations.

In December 1837, he gave to University College and Hospital, London, 1000*l.*, and shortly before his death, *viz.* on 5th April last, he gave to the College and Hospital, 2000*l.* He subscribed liberally to the Law Association for the benefit of the widows and families of professional men, and of that society he was also a director. The United Law Clerks' Society also partook of his bounty, and he warmly promoted its useful objects.

Having thus advanced himself to the first rank in the branch of the profession to which he belonged, and distributed his well-earned riches with a liberal hand, Mr. Brundrett departed this life on the 4th May 1841, having been confined to his

private chambers in Plowden Buildings, Temple, for some months previously. No specific disease could be traced, but his constitution appeared to be worn out, and he gradually became weaker, though he was not confined to his bed till the Sunday preceding his death. His only relations were the children of his maternal cousins, resident in Cheshire, of whom he scarcely ever heard. He has left legacies to them, and to his intimate friends, amounting to about 4000*l*. The will, dated 21st December 1839, has been proved (*sub* 40,000*l*.) by his executors Mr. Randall and Mr. Simmons, and they with Mr. Brown, his other partner, are appointed trustees. He has left to his partners, in addition to his wives, plate and other specific legacies, his real estates and all monies due to him on real securities, and all other his property which he could not by law effectually bequeath to charities, (charged, however, with the payment of legacies, debts, and funeral and testamentary expences.) He has left the residue of his personal property, subject to the payment thereof of annuities given by him to his servants and others, to University College, London, and Hospital,—two-thirds to the College, and one-third to the Hospital,—directing the council to appropriate the gift to the College for the formation of a scholarship or scholarships, in such department of *law*,^a literature, or science, as may appear to them more especially to claim the benefit of that species of encouragement; and the gift to the Hospital to be applied towards the completion of a north wing to the building. His clerks and servants were not forgotten: to two of the former he has left handsome legacies, and annuities and legacies to the latter. He executed several codicils recently, and the last was dated about three weeks before his death. These papers show a kind feeling in his last days towards those who had faithfully served him.

In addition to the donations we have before mentioned, Mr. Brundrett's will contains the following bequests:—

“In trust to pay to the treasurers for the time being of the *Law Association* for the benefit of widows of professional men and their families in the metropolis and vicinity, the sum of two hundred pounds, clear of legacy duty, in furtherance of the objects of that institution. And also to pay the treasurers for the time being of the *Law Institution* in Chancery Lane, the sum of two hundred pounds, clear of legacy duty, in furtherance of the ob-

jects of that institution, for which legacies I declare that the receipts of the said treasurers respectively shall be sufficient discharges.”

The following is the clause in his will concerning his partners, to which we have alluded.

“Now I being anxious to modify the said articles in favour of my partners, and being well satisfied that I may rely to the utmost extent on their honor and integrity, do hereby request them to ascertain as soon as they conveniently can after my decease, the state of the partnership accounts between us, up to the 30th day of September succeeding my death; and my share and interest therein having been ascertained, to render an account thereof to my trustees and executors; and I declare that such account so rendered by my partners, and certified by them to be faithful and just, shall be binding and conclusive upon my trustees and executors, and all parties interested under this my will; and that neither they or any of them shall have any power or authority to interfere in the ascertaining the amount of my share and interest in the partnership, or in the settlement of the accounts thereof.”

We think this provision equally honourable to Mr. Brundrett and to his partners: it shews that their rectitude and accuracy during many years' experience, had won his entire confidence; and it proves that, always meaning uprightly himself, he could appreciate the same feeling in others, and being above all suspicion, he could repose in honourable confidence on the integrity of his survivors.

ADMISSION OF PAROL EVIDENCE TO EXPLAIN DOCUMENTS.

Referring to an article under this head, *ante*, p. 21, I apprehend that there can be but one opinion amongst the great majority of the profession, as to the correctness of the doctrine which J. B. W. seeks to impugn, and that it is supported both upon principle and by authorities. The distinction relative to the admissibility of extrinsic evidence in instruments under seal and by parol to explain the intention in such cases as that suggested by J. B. W. is only a part and parcel of one great and intelligible system, throughout every ramification of which the same distinction is observable, and the reason appears to be sufficiently obvious. An instrument under seal being attended with more formality, and of a more conclusive nature than a parol instrument, our law naturally attaches more weight and importance to it, very justly considering that the final determination of the parties is thereby more clearly defined, and more fully expressed. The distinction does not therefore appear to be a violation either of principle or good sense. The only point to be considered, therefore, is, whether that distinction is sanctioned and

^a We hope the council will feel bound to apply this bequest from a member of the profession, on the encouragement of legal learning.

borne out by the authorities which J. B. W. brings under review.

The first case is that of *Forley v. Wood*, in which J. B. W. says he fully concurs; and observes that the fact as to whether the holding was by deed or parol being omitted, is in his favor, because it shews its unimportance. From the Report of this case in 1 Esp. 198, it would appear that although it was alleged in the declaration to be by deed under seal, the plaintiff was unable to prove it, and, upon its being thereupon submitted that he should be nonsuited, Lord *Kengon* observed "that the lessor of the plaintiff being a corporation could only make a lease by deed under the corporation seal; and that this, therefore, was only the common case of a demise to the plaintiff in ejectment, which was never expected to be proved." It is clear, therefore, that Lord *Kengon* admitted the evidence on the assumption that the instrument was only by parol; this case cannot, therefore, be in J. B. W.'s favor.

The next case impugned, is *Doe d. Spicer v. Lea*, 11 East, 312, which he very broadly asserts has no reference to the doctrine he is assailing. It was there held that parol evidence was not admissible to shew that "the feast of St. Michael," in an instrument *under seal*, meant "Old Michaelmas," that being the period from which the parties held under a parol agreement prior to the lease, and that the feast of St. Michael, since the act altering the style, meant New Michaelmas. Now whether the evidence which the court refused to admit, were of the custom of the country that the feast of St. Michael meant old Michaelmas, or that it were of a prior holding from old Michaelmas, it is apprehended there can be no manner of difference. The principle established is precisely the same—that neither in the one case or the other is parol evidence admissible, unless, as observed by Lord *Ellenborough*, "there had been any reference in the deed itself to the prior holding." And it seems perfectly clear that the Court had in view the distinction which J. B. W. seeks to overturn; otherwise, why did they enquire "whether the holding in *Forley v. Wood* was by deed"? J. B. W. observes that the subject was not further alluded to, and therefore he cannot attach any weight to a question thus lightly asked. There is certainly a palpable difference between this case and *Forley v. Wood*. The difference is, that in the latter case, evidence of a custom *was* admitted to explain a parol instrument; in the former, evidence as to the period when a prior holding commenced, was *refused*, to explain an instrument *under seal*. But the distinction which J. B. W. seeks to establish between the two cases, is a distinction without a difference.

We next come to *Doe dem. Hull v. Benson*, 4 B. and Ald. 538. That was a case in which extrinsic evidences of the custom of the country was admitted to explain what was meant by "Lady Day" in a parol agreement. J. B. W. selects a particular portion of the judgment of the Court, which has a particular bearing upon the context, and then seeks to draw inferences

therefrom. Now in order to put the case fairly before the reader, let us give the judgment of C. J. *Abbott*. He says—"The real question is what the parties meant when they used the expression "Lady Day" in their original agreement, and whether we are at liberty to ascertain that by extrinsic evidence. In *Doe v. Lea*, the letting was by deed, and the rule of law is that evidence is not admissible to explain a deed." And he goes on to make the observation quoted by J. B. W., and then proceeds—"In the case of *Forley v. Wood*, where the letting was by parol, evidence of the custom of the country was admitted by Lord *Kengon*—I think that was a correct decision." *Holroyd, J.*, also observes "that *Doe v. Lea* was decided upon a principle of law not applicable to this case, for there the letting was by deed." J. B. W. asserts that *Doe v. Lea* was not very accurately looked at by either of the last named learned judges, because they are both wrong in their statement of the holding; but he leaves us to guess in what particular. The opinion of *Bayley, J.* was only an addition to that of the Chief Justice; he concurred in all that had been stated, and added his own remarks. The judgment of the Court in this case, therefore, shews, clearly, that, the distinction in question between parol instruments and under seal, was distinctly kept in view throughout the case, and there can be no reasonable doubt that had the holding been by deed, the evidence admitted would, in that case, have been rejected.

The case of *Doe d. Peters v. Hupkinson*, 3 D. and R. 507, clearly supports the decision in *Doe v. Benson*. It was decided upon the broad distinction between sealed and unsealed instruments; and whether the evidence admitted were of "the real understanding of the parties," or of the custom of the country, seems quite immaterial. It was certainly so considered by the Court in this case, as well as in that last cited. Nor is the ambiguity which J. B. W. seeks to affix to the word "therefore," very perceptible. The Court in other words said, because the instrument in this case is a mere written agreement, and because *Doe v. Benson* and *Forley v. Wood* have decided that extrinsic evidence is admissible to explain a parol instrument, therefore the evidence in the case before us is admissible. Surely there can be no ambiguity in this.

The case of *Smith v. Walton*, 8 Bing. 235, was decided expressly upon the authority of *Doe v. Lea*, and is, therefore, as much opposed to J. B. W.'s argument as that case itself. Nor does it appear that C. J. *Tindal* in this case even alludes to the distinction with regard to the nature of the evidence admissible, contended for by J. B. W. On the contrary, he lays down the rule broadly and generally thus:—"Evidence, no doubt, is admissible in the case of a parol holding at Martinmas generally to shew whether the day of taking was intended to be calculated according to the new or old style; indeed, such evidence" (not, however, evidence of a custom only) "was admitted in this very case."

It is, therefore, submitted in conclusion,

that J. B. W. has failed in proving that the distinction between parol instruments and under seal does *not* exist—that *Forley v. Wood* and *Doe v. Benson* establish the admissibility of evidence of local understanding in the case of a holding under an unsealed agreement—that *Doe v. Lea* does decide such evidence is not admissible in the case of a holding under seal—and that *Smith v. Walton* supports that decision.

T. F. J.

NEW BILLS IN PARLIAMENT.

BRIBERY AT ELECTIONS.

This bill for the Prevention of Bribery at Elections, recites that the laws in being are not sufficient to hinder corrupt and illegal practices in the election of members to serve in parliament: it is therefore proposed to be enacted, That every person hereafter to be elected, or who shall offer himself to be elected to serve in parliament, who shall at any time, directly or indirectly, in order to procure his election, or in consideration of his having been elected, give or promise or agree to give to any other person any money, office or employment, or any valuable consideration or reward, shall be deemed guilty of bribery.

2. That every person hereafter to be elected or who shall offer himself to be elected to serve in parliament, who shall at any time before the issue of the writ, or within one calendar month after the issue of the writ for the election, directly or indirectly, in order to procure his election, or in consideration of his having been elected, give or cause to be given to any person or persons having voice or vote in such election, any meat, drink, entertainment or provision, to or for any such person or persons in particular, or to or for the use of the place for which he is or offers himself to be elected, shall be deemed guilty of bribery.

3. That every person having or claiming to have a right to vote at any election of a member or members to serve in parliament, who shall at any time, directly or indirectly, ask or agree for or take any money, office or employment, or any valuable consideration or reward for voting or for having voted, or for refraining from voting, or for having refrained from voting at such election, or who at any time before such election, or within one calendar month after such election, shall, in consideration of voting or not voting, or of having voted or not having voted, ask or agree for or take any meat, drink, entertainment or provision of any kind at the cost of any candidate at such election, shall be deemed guilty of being bribed.

4. Penalty upon the person bribing.

5. Penalty upon the person bribed.

6. Witnesses may be compelled to give evidence of bribery.

7. Indemnity for witnesses.

8. That it shall be lawful for all persons who shall be so examined as aforesaid upon any action or prosecution to be commenced or instituted in respect of any of the matters to

which they shall be so examined as aforesaid, to give in evidence upon the trial of such action or prosecution, copies of the entries contained in any report made by any such committee to the House of Commons of such their several examinations; and that such copies shall be conclusive evidence upon the trial of all such actions and prosecutions of the fact of the examination of such persons, and of the questions proposed to such persons, and of the answers given by them to such questions.

9. That whenever any charge of bribery shall be brought before any such select committee, the committee shall receive evidence upon the whole matter whereon it is alleged that bribery has been committed; neither shall it be necessary to prove agency in the first instance before giving evidence of those facts whereby the charge of bribery is to be sustained; and the committee in their report to the House of Commons shall separately and distinctly report upon the fact or facts of bribery which shall have been proved before them, and also whether or not it shall have been proved that such bribery was committed with the knowledge and consent of any sitting member or candidate at the election.

CHANCERY REFORM BILL.

We are sorry to say that our foreboding has been verified, and that this bill has been lost for the present session. We regret this very much, and we should have been glad if both parties had agreed to come to some compromise as to the distribution of the patronage; in the meantime the unfortunate suitor must wait another year at least. Our only consolation in the matter is, that in another session, we trust that this bill may be accompanied by those further measures of reform affecting all the other stages of a cause which the profession has for some time so anxiously expected, and that after all, a more complete measure may pass. The Charitable Trusts Bill, we are happy to say, has passed the House of Commons, after some discussion on the clause relating to charitable estates held under the Municipal Corporation Act, which was, however, carried by 35 to 30 against Sir Edward Sugden.

POINTS IN COMMON LAW PRACTICE, BY QUESTION AND ANSWER. No. VI.

SUING IN FORMA PAUPERIS.

(See p. 54, *ante*.)

101. The 11 Hen. 7, c. 12, enacts that a poor person, having a cause of action, shall have a writ according to the nature of the cause, "therefore nothing paying for the same,"

and shall have counsel and attorney assigned, and all other officers requisite shall do their duties without any reward for their counsel, help, and business.

102. A defendant in a civil action is not entitled to the privilege given by this statute. *Anon.*, Barnes, 328; Bac. Ab. "Pauper," B.
103. Persons are admitted to sue in *formâ pauperis* by petition addressed to the Lord Chief Justice or Baron of the Court in which the action is intended to be brought.
104. The affidavit in support of such application must state that the party is not worth 5*l.* in the world, except his wearing apparel and the matter in question in the cause.
105. The Court will not grant an order to sue in *formâ pauperis* in a second action, unless the plaintiff pay the costs of the first action. *Weston v. Withers*, 2 T. R. 511.
106. If it clearly appear that the plaintiff has no cause of action, or is proceeding vexatiously, the Court will dispauper him. *Hawes v. Johnson*, 1 Y. & J. 10; *Faur v. French*, 5 Dowl. 554.
107. If a pauper omit to proceed to trial pursuant to notice or an undertaking, an application may be made to compel him to pay the costs. Rule H. T. 2 W. 4, s. 110.
108. The pauper is entitled to full costs if he succeed in his action. *Gongenheim v. Lane*, 4 Dowl. 482; 1 M. & W. 136; 1 Gale 343; but see *James v. Harris*, 7 C. & P. 257.
109. The defendant cannot set off the costs of issues found for him against the pauper's costs. *Foss v. Racine*, 4 M. & W. 610; 7 Dowl. 203; *Lovewell v. Curtis*, 5 M. & W. 158.
110. A party may be admitted to defend an indictment in *formâ pauperis*. *Rex v. Wright*, 2 Str. 1041; *Rex v. Puge*, 1 Dowl. 507.
111. Courts of Equity admit defendants to appear and defend, as well as plaintiffs to sue and proceed in *formâ pauperis*.
112. A pauper is liable to the costs of the defendant upon an unsuccessful demurrer or writ of error.
113. The application to sue in *formâ pauperis* must be made before the commencement of the action. *Foss v. Racine*, 4 M. & W. 610; *Jones v. Peers*, Mc. Cl. & Y. 282; *Lovewell v. Curtis*, 5 M. & W. 158.
114. A separate order must be obtained to sue in *formâ pauperis* in each action. Prac. Reg. 633.
115. The Court will not grant an order in a *qui tam* action, unless the plaintiff be the party grieved. *Hawes v. Johnson*, 1 Y. & J. 10.
116. If the plaintiff should part with his interest in the subject-matter, the defendant may discharge the order. Bac. Ab. "Pauper," B.
117. The court will not give costs against a pauper for unsuccessful interlocutory proceedings, so long as his order to sue continues in force. *Rice v. Brown*, 1 B. & P. 39; *Doe v. Trussell*, 6 East, 505.
118. Where a plaintiff sues as a pauper, and is

non-suited by a mistake, the Court will not stay the proceedings. *Winter v. Slow*, 2 Stra. 878; *Anon.* Sty. 386. But if he fail on the merits, he must pay the costs of the first action. *Goodtill v. Mayo*, Hullock's Costs, 214.

THE STUDENT'S CORNER.

REPAIRS BY TENANT FROM YEAR TO YEAR.

The neighbourhood in which I reside has just been visited by a violent hail storm, accompanied with thunder and lightning, and considerable damage sustained by the breaking of windows. In the Legal Observer, vol 6, p. 275, (the value of which is greatly enhanced by the Index, lately published) it is stated that "a tenant from year to year is bound to make all fair and tenantable repairs, such as putting in windows, which have been broken by him, per Lord Kenyon, 2 Esp. N. P. C., 590; but his waste, to be actionable, must be wilful and not permissive only, *Gibson v. Wells*, 1 N. R. 290, and in Woodfall's Landlord and Tenant (by Harrison) it is laid down that "such a tenant is only liable where an injury happens to the premises through voluntary negligence, and not for injuries arising from accidental fire, wear and tear of time, or the like." And in Chitty jun. on Contracts, 2d edit. p. 267, I find the following: "a tenant from year to year is liable, if he omit to adopt reasonable and usual precautions to obviate at a slight expense the occurrence of great and manifest injury to the premises. If a window or tile were even accidentally broken, it seems that he would be liable if he did not repair it, if the plain consequence of his negligence would be a serious damage to the house from wet," &c.

Now perhaps some of your readers can inform me whether a tenant from year to year is liable to repair windows broken by a violent storm?

A COUNTRY SUBSCRIBER.

STATUTE OF LIMITATIONS.—ARREARS OF RENT AND INTEREST.

By 3 & 4 W. 4, c. 27, s. 42, no arrears of rent or interest of money charged on land, or for any legacy can be recovered "but within six years next after the same respectively shall have become due."

I believe it is generally considered that an arrear of six years may always be recovered; but it appears to me that in every case where rent is payable quarterly, or at other intervals less than a year, not more than five years and three quarters, or five years and half, or such other fractional part of a year as corresponds with the reservation, can be recovered; for the word *within* excludes the first quarter or other interval, e. g. suppose rent to be reserved payable quarterly, on a lease commencing at Christmas 1834; one quarter's rent became due at Lady-day, 1835, and six years' rent were due at Christmas, 1840, and no part of the

rent has yet been paid; it is now (May 1841) more than six years since the first quarter's rent became due, and consequently the remedy for it is barred by the statute, and after Midsummer, Michaelmas, and Christmas next, those successive quarters will lapse into the same predicament. Now if the rent was only payable *yearly* the remedy would remain available until the end of the seventh year, *i. e.* in the supposed case until Christmas 1841, for as the first year's rent did not become due until Christmas, 1835, the six years will not sooner expire. No doubt the intention of the legislature or (to speak more correctly) of the legislator or framer of the act, was to allow of the recovery of full six years rent to the end of the year last elapsed, so that an action might be brought for the whole at any time before the seventh year's rent had accrued; but the words "shall have become due" apply to the arrears and not to the years, and I do not see how the courts can give the act a different construction.

M. A. J.

REMOVAL OF WESTMINSTER COURTS.

ANOTHER meeting of the Select Committee of the House of Commons was held on Tuesday, the 8th instant: the Solicitor General in the chair; present also, Mr. Freshfield, Mr. Hayter, Mr. Strutt, Sir Edward Sugden, Mr. Villiers, and Sir Eardley Wilmot.

The witnesses examined were Lord Abinger, the Vice Chancellor, Mr. Erle the Queen's Counsel, and Mr. Barry the Architect. Evidence was also given of the probable cost of the ground necessary to render the Rolls Estate sufficient for the intended building, if that site should be selected. It was also proved that the far larger part of the freeholders and leaseholders of Lincoln's Inn Fields had signified their assent to the appropriation of the centre of the garden.

ATTORNEYS TO BE ADMITTED.

Michaelmas Term, 1841.

QUEEN'S BENCH.

[Continued from p. 107.]

Clerk's Name and Residence.

Hilton, Thomas William Leigh, 38, Trevor Square; and John Street.

Hore, Maurice John, 27, Great Russel Street; and Liverpool

Juckes, George, 18, Wakefield Street; and Shrewsbury.

Knight, Henry, Edmonton.

Kirby, George, Oxford; Bicester; and Lamb's Conduit Street.

Lanham, John Slade, Horsham.

Langley, William Tapley, 25, East Street, Red Lion Square; and St. Sidwell.

Loftus, John Webb, 5, Lower Craven Place, Kentish Town; and Grove Terrace.

Lee, George, 42, Wilmington Square; and Newcastle-upon-Tyne.

Lumb, Frederick, Wakefield.

Mackeson, Edward, 57, Lincoln's Inn Fields; and Manchester Street.

Moore, Joseph Henry, 29, Surrey Street; Walsall; Arundel Street.

Molineaux, Joseph, 9, Norfolk Street, Strand; and Fenchurch Street.

Marshall, Henry, 50, Marchmont Street; and Berwick-upon-Tweed

Mertens, Herman Dirs, 51, Lincoln's Inn Fields; and Keppel Street.

May, John, 4, Symond's Inn; and Sheffield.

Marshall, Frederick, 29, Essex Street, Strand.

To whom articulated, assigned, &c.

William Crie, Manchester; assigned to William Slater, Manchester.

Joachim Andrade, Liverpool.

Thomas Harley Kough, Shrewsbury.

John Scard, Bedford Street; assigned to Geo. P. F. Gregory, St. Swithin's Lane.

Charles Woodbridge, Uxbridge; assigned to George Parsons Hester, Oxford.

Thomas Coppard, Horsham.

Thomas Edward Drake, Exeter.

Joseph Darvale, Reading.

William Spours, Alnwick.

Robert John Lumb, Wakefield.

Wightwick Roberts, Lincoln's Inn Fields; assigned to William L. Bicknell, Lincoln's Inn Fields; assigned to George William Fiach, Lincoln's Inn Fields.

William Wills, Birmingham.

George Philcox Hill, Brighton.

George Marshall, Berwick-upon-Tweed.

Barclay Farquhar Watson, Lincoln's Inn Fields.

Bernard John Wake, Sheffield.

Henry Marshall, Plymouth; assigned to Geo. Weller, 29, Essex Street.

Mead, Joseph Cheat Sawen, 20, East Street, Red Lion Square.
Munton, William, 14, Millman Street; and Banbury.
Nevinson, George Henry, Hampstead.
Nicholson, George, 3, Claremont Square, Islington.
Newby, Charles John, Hampstead.
Newton, Robert, 20, Keppel Street.

Oakley, Charles Henry, 25, Red Cross Square; and Old Kent Road.
Parson, George John, 3, New Millman Street; and Epsom.
Pidcock, Richard, Woolwich.
Parry, Henry Deptford.
Peachey, Edmund, 23, Goulden Terrace, Islington; and Chichester.
Paterson, William Benjamin, Wimbledon.
Parke, William, the younger, 11, Caroline Street; and Upper Montague Square.
Pope, Benjamin David, 41, Chapman Street, Islington, and Cleobury Mortimer.
Patteson, George Lee, 5, Chancery Lane.
Ponsford, Henry, 43, Lincoln's Inn Fields.

Gilbert Bolden, Parliament Street.
John Munton, Banbury.

Daniel Smith Bockett, Lincoln's Inn Fields.
George Nicholson, Hertford; assigned to Edward Thompson, Salters' Hall.
Henry Seymour Westmacott, Gray's Inn.
Henry Norton, Gray's Inn; assigned to John Henry Benbow, Lincoln's Inn.
John Oakley, Long Lane; assigned to Geo. F. Hudson, Bucklersbury.
William Evereat, Epsom.

William Nokes, Woolwich.
Robert Christopher Parker, Greenwich.
James Bennett Freeland, and Robert Raper, Chichester.
Thomas Mortimer Cleobury, Warwick Square.
James Parke, Lincoln's Inn Fields.

William Samuel Price Hughes, Worcester; assigned to Henry Saunders, Kidderminster.
John Chevallier Cobbold, Ipswich.
William Gainsford, Berkeley; assigned to Henry Methold, Lincoln's Inn Fields.

[To be continued.]

SUPERIOR COURTS.

Lord Chancellor's Court.

INTERPLEADER.—LANDLORD AND TENANT.—DEVISEE AND HEIR-AT-LAW.

Tenant after death of his landlord pays rent to his devisee. The heir-at-law disputes the will and claims the rent. Held that the tenant may compel the devisee and heir to interplead, and is entitled to an injunction to restrain either of them from bringing actions at law against him.

This was an appeal from an order of the Master of the Rolls. The plaintiff was a tenant of Mr. James Wood, late of Gloucester, hanker, &c., deceased. The defendants are, *first*, Sir Matthew Wood, and other persons named by the deceased as his executors, in one of the testamentary papers left by him; *secondly*, Mr. Helps, legatees, and several other persons claiming as heirs-at-law of the deceased. The bill prayed that the defendants may be compelled to interplead among themselves as to the right to the rent, which the plaintiff was ready to pay as the Court might direct; and it prayed for an injunction to restrain the defendants or any of them from bringing actions at law, or proceeding with any action already brought to recover the rent of the land from the plaintiff. It appeared from the bill and answers that soon after the death of Mr. James Wood, Sir Matthew Wood and his co-executors, who were also the devisees in the testamentary papers, had a meeting of the tenants, the plaintiff among the rest, who acknowledged them as

their future landlords, and paid them rent accordingly. The testamentary papers were afterwards questioned by persons claiming to be heirs-at-law and next of kin of the deceased, and they are still in litigation and not admitted to probate. Those persons or some of them claiming to be heir-at-law, served notices on the tenants not to pay any more rent to the persons alleging title under the testamentary papers. The plaintiff having received such notice, refused to pay any more rent to the executors and devisees; and they then brought an action of ejectment against the plaintiff, wherefore he filed his bill. The Master of the Rolls granted the injunction as prayed for, and on motion to dissolve it his lordship refused that application, holding that the plaintiff had not, by allowing to the devisees and paying them rent, deprived himself of the right afterwards, when the heir-at-law made claim, of calling on all the claimants to interplead.

Mr. Turner and Mr. Walker for the devisees, appealing from the order of the Master of the Rolls, submitted that this was not fit matter for a bill of interpleader—that the plaintiff having admitted the title of the devisees by payment of rent, could not turn round and set up the claim of the heir-at-law. The action of ejectment would try the right completely, and that action ought therefore to be allowed to go to trial.

Mr. Wigram and Mr. Barber.—The only way to try the title of the persons who call themselves executors and devisees, is by the suit now pending in the Ecclesiastical Courts. There they have as yet failed to prove their title, and they have appealed to the Judicial Committee of Privy Council. The decision of that tribunal will settle the question of right.

* See all these testamentary papers, *ante*, p. 3. (Vol. 22 of L. O.)

It may turn out that Sir Matthew Wood and his co-executors are no executors at all, and have no right whatever to the rents.

The following cases were referred to as to the plaintiff's right to make the defendants interplead:—*Dungay v. Angrove*,^b *Clarke v. Byne*,^c *Smith v. Targett*,^d *Johnson v. Atkinson*,^e *Stevenson v. Anderson*,^f *Vicary v. Widger*,^g *Crawshaw v. Thornton*,^h *Cornish v. Scarell*,ⁱ besides other cases which are mentioned in the judgment.

The Lord Chancellor said it was a bill of interpleader, filed by a tenant of part of the lands of the late Mr. James Wood, against persons who claimed the rent as his executors and devisees, and against his heir-at-law. The question was whether this was a proper subject for interpleader. Sir Matthew Wood was the only defendant who disputed the plaintiff's right to file the bill. Whether it was proper matter for interpleader could not be easily collected from the answers. The Master of the Rolls, before whom the case was much discussed, held that it was fit matter for such a bill; and he granted an injunction against the action of ejectment brought by Sir M. Wood for non-payment of rent. It was now objected to his Lordship's order, that it was contrary to the principles of all the cases between landlord and tenant; for that the plaintiff was precluded now from disputing the title of Sir Matthew Wood to the future rents, as he had admitted it by paying him rents for some time back as devisee of the late landlord. Several cases at law as well as in equity were cited for that position, and it became necessary to examine those cases. It appeared to his Lordship, after a close examination of the cases, that it was the established result of all of them that a party may resist, although he had paid rent. In *Rogers v. Pitcher*,^k a case in replevin, it was held that where the plaintiff did not originally receive the possession of the land from the avowant, he may rebut his title by shewing that though he paid rents to him, he paid them under circumstances which did not entitle the avowant to rent. That doctrine was followed up by the case of *Fenner v. Duplock*,^l and by *Gregory v. Doidge*,^m which was a stronger case. Then came *Hopcraft v. Keys*,ⁿ and *Doe d. Plevin v. Brown*,^o in which Lord Denman, giving judgment, and holding that the tenant had a right to dispute the title of the person whom he had before acknowledged as entitled to the rent, said that no general rule was more strictly to be observed than that which precludes the tenant from disputing the title of his landlord, yet no case had decided that it would not be open to the tenant to explain under what circumstances he made any attornment or acknowledgement. He might have made such

acknowledgement, and paid rent under mistake, or misapprehension or misrepresentation of the right, as was the fact in most of these cases. The case of *Hall v. Butler*,^p was the last decision at law that was referred to, and it was said to be contrary to the other cases, and to the right of the present plaintiff. It appeared that Nevett had let the land by parol to Hall, and he afterwards at a meeting with Hall and Butler said, Butler ought to stand in his place, that he was the landlord, and on that representation, which turned out to be untrue, Hall acknowledged Butler had paid him rent on account. But another person claimed afterwards, and the tenant refused to pay rent to any one until they settled the right. The last claimant having done no act to enforce his claim, the tenant had no right to call on the other to dispute with him. "A tenant cannot make his landlord interplead with a stranger setting up a demand," as was said in *Clarke v. Byne*: but the parties claiming rent in the present case are not strangers. They are admitted to be the heirs-at-law, claiming against devisees. The tenant here did not dispute the title of the person from whom he held. His Lordship came to the conclusion from a review of the cases, that this plaintiff was entitled to dispute the title of the parties after paying them rent, and that therefore it was a proper subject for interpleader, and he dismissed the appeal with costs.

Sen v. Wood and others.—April 1st, 1841.

Vice Chancellor's Court.

PRACTICE.—INJUNCTION.

The Court will restrain proceedings at law for the recovery of a bill of exchange, accepted by one of several partners in the name of the firm, where the transaction is repudiated by the other partners, and there are sufficient circumstances to induce the Court to think that further enquiry is necessary. But the amount of the note must be brought into Court.

The plaintiffs were the members of a respectable firm, practising as solicitors in the city, and were formerly in partnership with Mr. Frederick Lock, with whom they continued to carry on business until February 1839, when the latter left the firm. The bill stated that shortly after Mr. Lock's secession, the plaintiffs were surprised at receiving an intimation from the defendant that Mr. Lock had been in the habit of accepting bills in the name of the firm, although the articles of copartnership between the plaintiffs and Mr. Lock contained an express stipulation that no bill or note should be drawn or accepted by any one of the partners without the knowledge and consent of the firm, and the defendant also then informed them that one of such bills for 1000*l.* was shortly coming due. The plaintiffs, immediately on receiving this intimation, gave notice to the defendant that they repudiated all these bill transactions on the part of Mr. Lock,

^b 2 Ves. jun. 304.

^d 2 Anstr. 795.

^f 2 Ves. & B. 407.

^h 2 Myl. & C. 1.

^k 6 Taunt. 204.

^m 3 Bingh. 474.

^c 13 Ves. 383.

^e 3 Anstr. 798.

^g 1 Sim. 15.

ⁱ 8 Taunt. 471.

^l 2 Bingh. 10.

ⁿ 9 Bingh. 613.

^o Adol. & Ell. 447.

^p 10 Adol. & Ell. 20-4

and should resist any attempt to make them liable for the bill in question, and soon afterwards filed their present bill, which prayed that it might be declared that the bill of exchange in question was obtained in fraud of the plaintiffs, and that it might be delivered up to be cancelled. The defendant having commenced an action at law for recovering the amount of this bill, a motion was now made for an injunction to restrain further proceedings in the action.

K. Bruce and Heathfield, for the plaintiffs, said that this was properly an equitable as well as a legal question, and the plaintiffs having therefore brought it before a Court of Equity, were entitled to have the decision of that Court, although the defendant might think it more to his advantage to proceed at law. The plaintiffs, too, had submitted their case to equity long before the defendant had taken any proceedings at all, for their bill was filed in May 1840, and amended in December in the same year, while the plaintiff's action was not brought till after the latter period. Another important reason for this Court's interfering also was that the fullest explanation might be obtained respecting the transactions out of which the alleged claim of the defendant had arisen, and this could not be obtained at law, for it was a rule at law that in an action against several persons, though one suffered judgment by default, his co-defendants could not examine him as a witness. Besides, in this Court the partnership transactions could be enquired into, and the accounts of any one partner who had acted in contravention of the partnership articles might be properly distinguished. *Brown v. De Tastet*, 1 Jac. 284.

Jacob and Little, in opposition to the motion, said the plaintiffs were bound to shew some equitable grounds for the Court's interference, before they could prevent the defendant from exercising his legal right. *Glascott v. Lang*, 3 Myl. & Cr. 451. No such grounds could here be shown, for the defendant had completely answered the plaintiff's bill. The plaintiffs stated that the defendant must have known when he was discounting bills for Mr. Lock, that such transactions could not be carried on for the benefit of the firm, whereas it appeared that the bills originally discounted, were drawn by two clients of the firm, and the defendant might reasonably suppose that all advances made by him were for the use of the partners generally. It was not enough then to suggest a case of suspicion, for if the allegations in the plaintiff's bill were positively denied by the answer, the Court would not act upon inference. *Clapham v. White*, 8 Ves. 35.

The Vice Chancellor stopped the reply, and intimated that the amount of the note must at all events be brought into Court, which the plaintiff's counsel having agreed to do, his Honor said:—The case was a very simple one. The plaintiffs and Mr. Lock were in partnership together, and any person having notice of a partnership contract, was in this Court held to have constructive notice of all the terms of that contract. One of the stipulations of the

contract in this case was, that no one of the partners was at liberty to use the name of the firm for any other than partnership purposes. In order, therefore, to entitle the defendant to avail himself of the security in question, he must show that the money was advanced for partnership purposes; and there being quite sufficient to satisfy the Court that further inquiry was necessary in order to ascertain the equitable rights of the parties, he should order the injunction to issue upon the understanding that the money should be forthwith brought into Court.

Injunction ordered accordingly.—*Smith v. Coleman*, April 24th and 26th, 1841.

WILL, CONSTRUCTION OF.—SPECIFIC BEQUEST.

A general bequest of all a testator's property to a person for life, followed by an enumeration of various parts of such property, and then an absolute bequest of those parts, and all the residue of his property, to the same person, does not enlarge the life estate into an absolute gift.

And in such a case the rule in Howe v. Lord Dartmouth, that where personal property is bequeathed for life with remainders over, and not specifically, it must be converted, is applicable.

The bill in this case was filed for the administration of a testator's estate, and a declaration of the rights of the parties interested therein. The testator by the former part of his will bequeathed the whole of his property to his wife for life, with remainder to her children equally. He then bequeathed certain specific legacies to his children and to his wife, his furniture, clothes and books, and thus continued: "As to my leasehold house, 1000*l.* new 4 per cent. annuities, and 1500*l.* 3 per cent. consols, all this I give, with the residue of my property, to my wife."

K. Bruce and Steer, for the plaintiffs, contended that the testator clearly intended the wife to take only a life interest, and that the latter words in the will were only used by him for the purpose of making a catalogue of the property which he intended his wife to take for life. The rule was that where real estate was plainly given, the devise was not to be altered by ambiguous words; but if the devise was only to be explained by subsequent words, then the intention of the testator was to be ascertained by reference to the whole will. The reason was, because a devise of land was necessarily specific, but it is otherwise with regard to personality. In construing wills, the first duty of the Court was to make all the words, if possible, stand together, and if that could not be done consistently with sense and propriety, then to give such a construction as would best approximate to the apparent intention of the testator. No doubt a bequest of personality must be considered as an absolute gift, if not otherwise expressed; but here the testator had expressly given a life estate, and the plaintiffs were there-

widow entitled to ask for a declaration that the widow was entitled to the property only for her life.

Richards and Rogers, for the husband of the widow, who had married again, insisted on her right to all the property particularly described absolutely, or at all events to such part of it as could be included in the residue; for if the first and last words of a will were inconsistent, the last words were always considered to explain the meaning of the testator. The question of conversion could not be held to apply, for there was no declaration in the will that could lead the Court to infer the testator contemplated any change of his property at his death; but on the contrary, the whole of the bequest bore with it a specific character. *Pickering v. Pickering*, 4 Myl. and Cr. 289.

The Vice Chancellor, after reading the first part of the will, said, that according to the literal reading it was sheer nonsense, and the Court was not bound, therefore, to put a construction upon the whole of the will. The bequests to the children were inconsistent with the supposition that the testator intended the wife to take the whole, and the latter part of the will must be considered as a mere enumeration, although an imperfect one, of his property.

The rule, then, in *Howe v. Lord Dartmouth* would apply, and the wife must be declared entitled to the property for her life, with remainder to the children.

Vaughan v. Buck, May 24th, 1841.

Queen's Bench.

[Before the Four Judges.]

COURT OF REQUESTS.—TRESPASS.

A party, by stating a cause of complaint to commissioners who act upon it, the matters not being properly within their jurisdiction, does not thereby become liable in trespass at the suit of the person against whom he has thus set the law in motion.

But the commissioners who have wrongly exercised their discretion on his statement, and have acted without jurisdiction, are liable. And so are their officers, who have acted under their warrant.

Lord Denman, C. J., delivered judgment. In this case there had been a suit against the present plaintiff in a local court, to recover a small sum of money alleged to be due from him. Judgment was obtained, and his goods were taken in execution. He brought trespass against the defendant Morley, who had sued him in the local court, and against the commissioners and the officers of that court. At the trial of the cause before Lord Abinger, that learned Judge thought that the defendant Morley was not liable, for that he had only stated his case to the commissioners and asked them to act upon it, but they had, in their own discretion acted upon his statement. In his opinion, therefore, the commissioners who had, as it then appeared, acted in a matter which was without their jurisdiction, were liable to the action. It was then contended on behalf of the officers that

as they had acted under the orders of the commissioners, and had merely obeyed the direction of the Court, of which they were officers, they could not be considered liable to the action. But Lord Abinger was of opinion that if the commissioners had no authority, the officers who acted under their orders could have none, and he left the facts with that opinion upon the law to the consideration of the jury. A verdict was given for the plaintiff as against the commissioners and officers. A rule has since been obtained to set aside that verdict on the ground of misdirection, and to enter the verdict against Morley alone. We think however, that the direction was right. *Cohen v. Morgan*,^a is an authority on this point. It is clear from that and other cases that a party who merely originates a suit by stating circumstances to commissioners or a magistrate having jurisdiction in the matter, and having authority to exercise his discretion, in granting or refusing the application of the party is not liable in trespass for the consequences of having made such statement. A doubt was then raised as to the liability of the commissioners, who, it was said, might not be able to ascertain at the moment the truth of such statement, and whose duty it was to award process, on a reasonable case being made out to them for their interference. But we do not agree with this reasoning. They acted on the information, summoned the party, heard the case, and awarded sixty days imprisonment to the present plaintiff. The warrant itself was defective, inasmuch as it had not truly described the Court of Requests, nor followed the form of the act on which it was granted. As to this latter point, it was said that the mistake ought to be considered the act of their clerk; but at all events they were liable for having acted out of their jurisdiction. This defect of jurisdiction also deprives the officers of the protection which might otherwise have been afforded to them by the act of the Court. *Andrews v. Morris*,^b is an authority in point. As it was, the warrant was nothing more than waste paper. In that case the officer was misled by the clerk of the Court furnishing him with a warrant which was good in form, but which it was beyond his jurisdiction to grant. We must apply the decision in that case to the present, and the rule therefore which has been obtained to enter a verdict against the defendant Morley must be discharged,

Garratt v. Morley, T. T., 1841. Q. B. F. J.

MANDAMUS.—COMPENSATION.

A party dismissed from an office in a corporation may, under the provisions of the Municipal Reform Act, appeal to the Lords of the Treasury against a decision of the town council on the question of the amount of compensation, but cannot appeal to them on the question of his title to be compensated.

^a 6 Dowl. & RyL. 8.

^b *Ante*, L. O. Vol. 21, p. 301.

Where the Lords of the Treasury had decided that a party was entitled to compensation, and had then, without hearing the corporation on the question of amount, fixed that amount, this Court refused a peremptory mandamus to compel obedience to the order thus irregularly made.

Lord Denman, C. J. delivered judgment in this case. This was an application for a peremptory mandamus to command the defendants to execute a bond, to give compensation to a party who had been town clerk in the borough of Newbury. The town clerk had been removed, as he alleged, without cause, and claimed compensation accordingly. The return to the mandamus set forth several imputed improprieties in the conduct of the town clerk, such as keeping in his hands money belonging to the corporation, and mismanaging certain Chancery suits in which he had been engaged for the corporation. These grounds of complaint, it was contended, were not sufficient to justify the dismissal, as they were not connected with the office of town clerk. But the facts do not shew that he is entitled to make that objection. He appealed against the motion to the Lords of the Treasury, and the defendant answered that he had been removed for misconduct. We have already decided that a person removed from an office for misconduct, cannot appeal to the Lords of the Treasury, to determine whether an motion for such a cause is justifiable, and that they are only entitled to say whether the amount of compensation, where any compensation is to be given, has been fixed by the town council at a proper amount. They are not judges of appeal against the decision of the town council, where the dismissal is for misconduct. They have here, however, declared that the town clerk ought not to have been dismissed. This we are of opinion they had no right to do. The question of the right to compensation having been decided here, the parties were at liberty to go before the Lords of the Treasury on the question of amount. But we do not find that the corporation was heard on that question, and therefore we think that a peremptory mandamus cannot issue.

Rule for a peremptory mandamus discharged.—*The Queen v. The Mayor and Town Council of Newbury*, T. T. 1841. Q. B. F. J.

PRACTICE.—RE-HEARING.

Where a party has a full opportunity to bring his case before the Court, and neglects to avail himself of that opportunity, and his rule is discharged for want of producing sufficient materials for the judgment of the Court, he cannot afterwards come and ask for a fresh hearing of the same application.

Mr. Gunning shewed cause against a rule, calling on the prosecutors to shew cause why the verdict in this case should not be entered upon the first two counts only of the indictment, which was for the non-repair of a railway. The short answer to this application is that the case has already been before the Court, and

has been disposed of. The trial took place at the summer assizes for Bedfordshire, in 1838. The verdict was then given for the defendant, but leave was reserved to the prosecutor to move to enter a verdict for the crown. In Michaelmas term, 1838, a rule was obtained for that purpose. At that time the judge's notes were before the Court. If a rule be discharged on the ground that the party has not brought before the Court sufficient materials in support of it, he will not be allowed to renew the motion upon proper materials, if they were in existence at the time of the first application, and might have been brought forward. That rule was made absolute, and the verdict was entered for the crown generally, on all the counts. In the subsequent term, a rule was obtained by the defendants in the same terms as that now before the Court, viz. for confining the verdict to the first two counts. That rule, upon cause shewn, was discharged with costs, on the ground that the notes of the learned judge who tried the cause were not brought before the Court by the affidavit upon which the rule was moved. The defendants afterwards obtained the present rule, which was drawn up on reading the notes of the learned judge. That rule must be discharged. The defendants should have desired the plaintiff to limit the verdict when the rule was argued in the first instance. And again:—It is well established by several decisions that if a party comes with insufficient materials and asks for the interference of the Court, and his application is refused by the Court upon that very ground, he cannot afterwards renew his application. *The Queen v. The Leeds and Manchester Railway*.^a

The Court then called on

Mr. Byles to support the rule. The judge's notes would in the first instance have been brought before the Court, but that the Court itself declared that the application for them must be the subject of a distinct motion. That motion has accordingly been made, and the notes are now here.

Lord Denman, C. J.—We cannot depart from the rule that where a party has a full opportunity of bringing his case before the Court, and neglects to avail himself of that opportunity he cannot afterwards be allowed to come and ask for another hearing.

Rule discharged.—*The Queen v. The Inhabitants of Barton*, T. T. 1841. Q. B. F. J.

Queen's Bench Practice Court.

SERVICE OF PROCESS.—BOUNDARY OF COUNTY.—PROOF OF AFFIRMATIVE.

Where a writ of summons is served on a defendant in a county of which he is not described, and it is sworn by the defendant that the place of actual service is more than 200 yards from the boundary of the two counties, it is not sufficient, on an application to set aside the service, for the plaintiff to swear that according to an authentic

^a 1 Perr. & Dav. 146

map the distance of the place of service is less than 200 yards from the county boundary.

In this case a writ of summons had been issued, and in it the defendant was described as resident in the county of Middlesex, and the writ was served at Serjeant's Inn, Fleet Street.

Newton moved for a rule to shew cause why this service should not be set aside, on the ground that the place of service was more than 200 yards from the boundaries of the county of Middlesex. It was sworn that this was the case, and that there was no dispute as to the boundary of the county.

Peterdorff shewed cause, and produced an affidavit, in which it was sworn that the place of service appeared, on examining an authentic map, to be less than 200 yards from the boundary of the county of Middlesex, and the city of London. Therefore, it was submitted, that according to the provisions of the Uniformity of Process Act, the service was regular.

Wightman, J., thought that it did not sufficiently appear from the affidavit in answer, on the part of the plaintiff, that the distance of the place at which the actual service was effected, was not more than 200 yards from the boundary of the city of London and county of Middlesex. The rule must, therefore, be made absolute.

Rule absolute.—*Isherwood v. Dobin*, T. T. 1841. Q. B. P. C.

TRINITY TERM EXAMINATION.

PRESUMING that the subject of the examination of persons applying to practise as attorneys continues to be interesting to a large class of our readers, we have collected the following information relating to the proceedings of the present term.

The printed list of names extends to 161 candidates, but of these many had been previously examined, and a considerable number did not leave their testimonials at the Law Society. It appears that 108 only attended; out of which 102 were approved, and the remaining six were not deemed fit to be passed at present.

We inserted the questions in our last number, p. 103, *ante*, arranged under different branches of law and practice for the convenience of the student. We have heard it remarked that there were a few more questions than usual on the principles of the law. This interspersion of principle with practice, is, we think desirable, to ensure the sound knowledge of the candidate, and is especially favorable to those who come from the country.

LAW BILLS IN PARLIAMENT.

House of Lords.

- For holding Petty Sessions and Summary Trials. [In Committee.] Earl Devon.
- To limit the Criminal Jurisdiction of the Quarter Sessions. [For 2d reading.]
- Tithes Recovery. [For 2d reading.]
- Double Costs, &c. [For 2d reading.]
- To amend the Law of Principal and Factor. Charitable Trusts. [For 2d reading.]
- To amend the Administration of Justice in Chancery Act. The Lord Chancellor. [For 2d reading.]

House of Commons.

- To remove objections to the admission of evidence on the ground of interest. [In Committee.] Mr. C. Buller.
- To allow Writs of Error in *Mandamus*. Sir F. Pollock.
- Administration of Justice in Boroughs. [In Committee.] Attorney General.
- Designs Copyright. [For 2d reading.]
- To exempt Tithes from Parochial Assessments. Mr. Hodges.
- To amend the Law of Sewers. [For 3d reading.]
- Church Rates Abolition. [For 2d reading.]

Bills passed.

- Copyholds.
- Charitable Trusts.
- Turnpike Roads.
- Frivolous Suits.
- Stamps on Law Proceedings.
- Felony Explanation.
- Exeter Small Debts Court.
- Wigan Small Debts Court.
- Newark Small Debt Courts.

Bills postponed.

- County Courts.
- Bankruptcy, Insolvency, &c.
- Administration of Justice in Equity.
- Appellate Jurisdiction.
- County Coroners.

THE EDITOR'S LETTER BOX.

We shall be able at an early period after the end of the present session, to dispose of our arrears of correspondence.

"A Student" is referred to Mr Whishaw's Law Dictionary, which we think will answer his purpose.

Again we beg that our correspondents who send Queries, will previously turn to their books.

The letters of "One, &c.," M. U.; "Lector;" and O. S., shall be attended to.

We are glad to announce that an edition of the Copyhold Act, with ample notes explanatory of the provisions of the act, by Mr. Rolla Rouse, will be published *early next week*.

The Legal Observer.

SATURDAY, JUNE 19, 1841.

— "Quod magis ad Nos
Pertinet, et nescire malum est, agitamus.

HORAT.

CHANGES IN THE LAW,

IN THE PRESENT SESSION OF PARLIAMENT.

No. VI.

THE COPYHOLD AND CUSTOMARY TENURE ACT.

Analysis of the Act.

- I. Commissioners and assistant commissioners, their duties and powers, ss. 1 to 10; and see s. 20, 39 to 44.
- II. Persons under disabilities, ss. 11 & 12; and see s. 56.
- III. Meetings to effect a general commutation of the manorial rights of the tenants of a manor, ss. 13 to 19.
- IV. Suits and differences as to manorial rights or boundaries of a manor, may be referred to arbitration, s. 21.
- V. Agreement for commutation, ss. 22, 23.
- VI. Appointment of valuers and valuation, ss. 24 to 30.
- VII. Schedule of apportionment, ss. 31 to 35.
- VIII. After confirmation of schedule of apportionment, rent-charge and fixed nominal fine to be paid in lieu of rents, fines, and heriots, ss. 36, 37.
- IX. Disputes touching the right to or amount of any fines or other manorial payments or incidents, may be heard by commissioners, subject to appeal, ss. 39 to 42.
- X. Witnesses, ss. 43, 44.
- XI. Provisions relating to rent-charge, ss. 45 to 51.
- XII. Voluntary commutations, ss. 52 to 55.
- XIII. Voluntary enfranchisements, ss. 56 to 64.
- XIV. General expenses under the act, ss. 65 to 70.

VOL. XXII.—NO. 660.

- XV. Enfranchisement consideration, how to be paid, raised, and appropriated, ss. 70 to 76, 78.
- XVI. Compensation to steward, s. 77.
- XVII. After confirmation of apportionment, &c., in cases of commutation customary modes of descent to cease, and the lands to descend and be subject to dower and curtesy in like manner as freehold lands, except in Kent, ss. 79, 80; and see s. 82.
- XVIII. After enfranchisement, lands to become freehold, subject to the enfranchisement consideration: commonable rights to remain, s. 81.
- XIX. Clauses improving the tenure, ss. 84 to 92.
- XX. Agreements, apportionments, &c. not to be liable to stamp-duty.
- XXI. False evidence to be deemed perjury.
- XXII. Limitation of actions against commissioners, &c. ss. 95, 96.
- XXIII. Partial exemption of crown manors from the operation of the act, ss. 97 to 99.
- XXIV. Limits of act, s. 100.
- XXV. Interpretation clause, s. 102.

An Act for the Commutation of certain Manorial Rights in respect of Lands of Copyhold and Customary Tenure, and in respect of other lands subject to such rights; and for facilitating the enfranchisement of such lands, and for the improvement of such tenure.

1. *Preamble. Appointment of commissioners.*
—Whereas it is expedient to provide the means for an adequate compensation for the rents, fines, and heriots payable to the lords of manors in respect of lands of copyhold and customary tenure, and in respect of other lands subject to such payments, or any of them, and for facilitating the voluntary enfran-

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chisement of such lands, and for improving such tenure; be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that "The Tithe Commissioners for England and Wales" for the time being shall be the commissioners for carrying this act into execution; and that, should the same not be fully carried into effect before the duties of the said tithe commissioners shall cease, it shall be lawful in such case for one of her majesty's principal secretaries of state to appoint any number of fit persons to be commissioners to carry this act into execution, in the place of such commissioners so ceasing to act, and at pleasure to remove any one or more of the commissioners so appointed, so that the number of commissioners shall never exceed three; and upon every vacancy in the office of commissioner some other fit person shall be appointed to the said office in like manner; and until such appointment it shall be lawful for the remaining commissioners or commissioner to act as if no such vacancy had occurred.

2. *Style of commissioners. To have a common seal. Instruments sealed to be received in evidence.*—And be it enacted, that the commissioners acting in the execution of this act shall be styled "The Copyhold Commissioners," and shall have their office in London or Westminster; and they, or any two of them, may sit from time to time, as they deem expedient, as a board of commissioners for carrying this act into execution; and the said commissioners shall cause to be made a seal of the same board, and shall cause to be sealed or stamped therewith all agreements and awards or apportionments confirmed by the said commissioners in pursuance of this act; and all such agreements, awards, apportionments, and other instruments proceeding from the said board, or copies thereof, purporting to be sealed or stamped with the seal of the said board, shall be received in evidence without any further proof thereof; and no agreement, award, or apportionment shall be of any force unless the same shall be sealed or stamped as aforesaid.

3. *Commissioners to report to secretary of state. Annual report to be laid before parliament.*—And be it enacted, that the said commissioners shall from time to time give to any one of her Majesty's principal secretaries of state such information respecting their proceedings, or any part thereof, as the said principal secretary of state shall require, and shall once in every year send to one of the principal secretaries of state a general report of their proceedings; and every year such general report shall be laid before both houses of parliament within six weeks after the receipt of the same by such principal secretary of state if parliament be sitting, or if parliament be not sitting then within six weeks after the next meeting thereof.

4. *Power to appoint and remove assistant commissioners, secretary, &c.*—And be it enacted,

that it shall be lawful for the said commissioners from time to time to employ such of the assistant commissioners appointed under the provisions of an act passed in the sixth and seventh years of the reign of his late Majesty King William the Fourth, and intituled "an Act for the Commutation of Tithes in England and Wales," as they shall see fit, or to appoint a sufficient number of other persons to be assistant commissioners, and also a secretary, assistant secretaries, and all such clerks, messengers, and officers, as they shall deem necessary, and to remove such assistant commissioner, secretary, assistant secretaries, clerks, messengers or officers, or any of them, and on any vacancy in any of the said offices to appoint some other person to the vacant office; and the persons so employed or appointed shall assist in carrying this act into execution, at such places and in such manner as the said commissioners may direct: provided always, that the said commissioners shall not appoint more than ten such assistant commissioners to act at any one time, unless the lord high treasurer, or any three or more of the commissioners of her Majesty's treasury of the United Kingdom of Great Britain and Ireland, shall, in the case of each such additional appointment, consent thereto; provided further, that the number of such clerks, messengers, and officers shall be subject to the like consent.

5. *No commissioner to sit in the House of Commons.* And be it enacted, that no commissioner or assistant commissioner appointed as aforesaid shall during the continuance of such office be capable of being elected, or of sitting as a member of the House of Commons.

6. *Operation of act as to appointments limited to five years.*—And be it enacted, that no commissioner or assistant commissioner, secretary, or other officer or person so to be appointed, shall hold his office for a longer period than five years next after the day of the passing of this act, and thenceforth until the end of the then next session of parliament; and after the expiration of the said period of five years and the then next session of parliament so much of this act as authorizes such appointment shall cease.

7. *Salaries and allowances.*—And be it enacted, that the salaries of the commissioners, the allowance to the assistant commissioners, and the salary of the secretary, assistant secretaries, clerks, messengers, and other officers to be appointed under this act, shall be from time to time regulated by the lord high treasurer of the commissioners of her majesty's treasury, or any three of them: provided always, that the salary of a commissioner shall not exceed the sum of two thousand pounds a year, including any salary to which he may be entitled under the said act of his late majesty King William the Fourth; nor the allowance to an assistant commissioner the sum of three pounds for every day that he shall be actually employed or travelling in the performance of the duties of his office, including any allowance to which he may be entitled under the said act; nor the salary of the

secretary the sum of eight hundred pounds a year; and that the salaries of the assistant secretaries, clerks, messengers, and other officers shall be in fit proportion: provided also, that the said lord high treasurer or commissioners of her majesty's treasury may allow to any commissioner or assistant commissioner, secretary, assistant secretary, clerk, messenger or other officer, any such reasonable travelling or other expenses as may have been incurred by him in the performance of his duties under this act, in addition to his salary or allowance respectively.

8. *To be paid out of consolidated fund.*—And be it enacted, that the salaries, allowances, and travelling and other expenses of the commissioners, assistant commissioners, secretary assistant secretaries, clerks, messengers, and officers as aforesaid, and all other incidental expenses of carrying this act into execution not herein otherwise provided for, shall be paid by the lord high treasurer or the commissioners of her majesty's treasury out of the consolidated fund of the United Kingdom of Great Britain and Ireland.

9. *Declaration of commissioners, &c.*—And be it enacted, that every commissioner shall, before he shall enter upon the execution of his office, make the following declaration before one of the judges of her majesty's Courts of Queen's Bench or Common Pleas, or one of the barons of the Court of Exchequer; (that is to say,)

"I [A.B.] do solemnly declare, that I will faithfully, impartially, and honestly, according to the best of my skill and judgment, fulfil all the powers and duties of a commissioner under an act passed in the fourth year of the reign of Queen Victoria, intituled [*here set forth the title of this act.*]

And that every such assistant commissioner shall, before he shall enter upon the execution of his office, make the like declaration (substituting the words "assistant commissioner" for the word "commissioner" before such judge or baron, or before any two justices of the peace for the county, riding, division, liberty, or jurisdiction wherein such assistant commissioner shall be resident at the time of his appointment, or before a master extraordinary in her majesty's high court of Chancery; and the appointment of every such commissioner and assistant commissioner, with the time when, and the name or names of the judge, baron, justices or master extraordinary before whom he shall have made the declaration as aforesaid, shall be forthwith published in the London Gazette.

10. *Commissioners may delegate powers, &c.*—And be it enacted, that the said commissioners may delegate to their assistant commissioners, or to any one or more of them, such of the powers hereby given to the said commissioners as the said commissioners shall think fit, except the power to confirm agreements, awards, or apportionments, or to frame forms of agreements and other instruments, as herein-after provided, or to do any act herein required to be done under the seal of the said commissioners; and the powers so delegated shall be

exercised under such regulations as the said commissioners shall direct; and the said commissioners may at any time recall or alter all or any of the powers delegated as aforesaid, and, notwithstanding the delegation thereof, may act as if no such delegation had been made; and all acts done by any such assistant commissioner in pursuance of such delegated powers shall be obeyed by all persons as if they had proceeded from the said commissioners, and the non-observance thereof shall be punishable in like manner.

11. *In case lord or tenants under disabilities.*

—And be it enacted, that whenever the lord or tenant of a manor, or any person interested in any question or right connected with any commutation or enfranchisement under this act, shall be a minor, idiot, lunatic, feme covert, or under any other legal disability, or shall be beyond the seas, the guardian, trustees, committee of the estate, husband or attorney of such person respectively, or in default thereof, or in case the party interested shall be unknown or not ascertained, then such person as may be nominated for that purpose by the said commissioners under their hands and seal, after due inquiry shall have been made by them as to the fitness of such person, shall for the purposes of this act be substituted in the place of such lord, tenant or other person; provided always, that if any lord, tenant or other person interested as aforesaid, shall be a trustee for charitable purposes, and the annual value of the charity estate shall exceed fifty pounds, such trustee shall not sign any agreement or power of attorney, or join in any proceedings under this act, without an order of her majesty's High Court of Chancery, to be applied for by petition; but on such order being obtained; or if the annual value of the charity estate shall not exceed fifty pounds, such trustee may sign any agreement or power of attorney, and otherwise join in any proceedings under this act, as if he had been beneficially interested in such charity estate.

12. *Agent may be appointed by power of attorney.*—And be it enacted, that it shall be lawful for any lord or tenant of a manor, or any other person interested in any commutation

under this act, by a power of attorney, given in writing under his hand, or, in the case of a corporation aggregate, under the common seal of such corporation, from time to time to appoint an agent to act for him in carrying into execution, the provisions of this act; and all things which by this act are directed or authorized to be done by or in relation to any person may be fully done by or in relation to the agent so duly authorized of such person; and every such agent shall have full power, in the name and on behalf of his principal, to concur in and execute any agreement and vote in any question arising out of the execution of this act, and make any inspection and sign any notice of objection under the provisions of this act; and every person shall be bound by the acts of any such agent, according to the authority committed to him, as fully as if the principal of such agent had so acted; and the

power of attorney under which the agent shall have acted, or a copy thereof authenticated by the signature of two credible witnesses, shall, at the first meeting under the act, attended by such attorney under such power, or whenever requested by the chairman, or by any other interested party present at such meeting, be delivered to the chairman for the time being, and the same or any like copy shall be appended to every agreement executed by any such attorney, and shall be sent with it to the office of the said commissioners as hereinafter provided: Provided always, that if any person having made such an appointment, shall deliver notice in writing or under a common seal (as the case may require) of the revocation thereof to the chairman at any such meeting, no act which shall be done by the person so appointed after the delivery of such notice, without a fresh appointment, shall bind the principal; and any such power may be in the form following;

"Manor of _____ in the county of _____
 "I, [A. B.] of, &c., lord [or, copyholder, customary tenant, or, freeholder, *as the case may be*] of the said manor, do hereby appoint C. D., of, &c., to be my lawful attorney to act for me in all respects as if I myself were present and acting in the execution of an act passed in the fourth year of the reign of her present Majesty, intitled, [*here insert the title of this act.*]
 Dated this _____ day of _____ one thousand eight hundred and _____
 (signed) A. B."

13. *Meetings at which lord and three-fourths in number and three-fourths in value of tenants may agree on terms of commutation, which shall bind all. 'Twenty-one days' notice to be given, and to be twice advertised*—And be it enacted, that any lord or lords of any manor, whose interest shall not be less than one-fourth of the whole annual value of such manor, or any tenant or tenants of any manor to the number of ten; or when there shall not be so many tenants as ten, then one-half of the tenants of such manor, may call a meeting of the lords and tenants of such manor, by notice thereof in writing under his or their hands, to be affixed at least twenty-one days before such meeting on the principal outer door of the church of the parish within the limits of which the said manor or the greater part thereof in value extends, or on the door or on some conspicuous part of some house or building wherein the courts for the said manor are usually held, and to be twice at least within such twenty-one days inserted in some newspaper (or once in each of two newspapers published in successive weeks) generally circulated in the county within which the said manor or the greater part thereof in value extends, for the purpose of making an agreement for the general commutation of the rents, fines and heriots thereafter to become due in respect of lands holden of such manor, and of the lord's rights in timber: and every lord and tenant attending such meetings shall bear his own expenses of attendance; and the lord and tenants who shall be present at any such meet-

ing called as aforesaid, such tenants not being less in number than three-fourths of the tenants of such manor, and the interest of the lord and the interest of the tenants in the manor and lands respectively not being less than three-fourths of the interest in the value thereof respectively, computing the interest of tenants as hereinafter is provided, may proceed to make and execute such an agreement as is hereinafter mentioned for the commutation of the rents, fines and heriots, thereafter to become due in respect of the lands holden of the said manor, and of the lord's rights in timber; and if expressly agreed between such lord and tenants, the commutation may be made to extend to rights in mines and minerals, but otherwise shall not extend to or affect such rights; and thereupon such agreement shall be reduced into writing, and a memorandum or minute thereof shall be signed by the persons so agreeing to such commutation, or by their respective agents.

14. *Terms on which agreement may be made.*

—And be it enacted, that such agreement for a commutation of the rights of the lord may be for the payment of an annual sum by way of rent-charge, and of a small fixed fine upon death or alienation, which shall in no case exceed the sum of five shillings, such rent-charge to commence, either in whole or in part, according as the said commissioners shall direct, from the date hereinafter mentioned, (except where otherwise directed by the said commissioners) and to be valued and variable (when such rent-charge shall exceed twenty shillings), according to the price of corn, in like manner as is mentioned and provided with regard to the tithe commutation rent-charge in and by the said act for the Commutation of Tithes in England and Wales; and the amount of every such rent-charge may be specifically stated in such agreement, or separate rent-charges may be therein agreed upon between the lord and any one or more tenants, parties to the agreement, or the agreement may provide that the entire rent-charge though stated therein, shall be subject to increase or diminution by the valuers to be appointed as hereinafter mentioned to such an amount per centum as shall be therein expressed, or that such separate rent-charges as aforesaid shall be subject to increase or diminution to a given amount per centum, in certain events to be specified in the agreement; and the agreement may also determine the apportionment for each tenant, or it may provide that the entire rent-charge, or the apportionment thereof, shall be fixed by such valuers, subject to the approbation of the said commissioners; and it may be agreed that so much of the rent-charge to be apportioned as aforesaid in respect of the lands of any tenant as shall be in lieu of fines, or other manorial rights to which such tenant would not be liable thereafter during his tenancy, shall not commence until the period of the next act or event on which a fine or such other manorial right would have become payable or due, and that the amount of such rent-charge shall be then increased accordingly;

but such agreement shall not fix the time for the commencement of the rent-charge to be apportioned in respect of the lands of any tenant who shall not be party to such agreement; and all other provisions may be made for carrying into execution the intention of the parties and of this act, so that nothing in such agreement (contained unless every tenant included therein shall be a party thereto) shall exclude or prevent the exercise of the powers hereinafter contained for apportioning the rent-charge according to the particular circumstances of each tenement, and for the relief of tenants for life and other persons in the cases hereinafter provided for; and such agreement may fix a scale of fees to be payable to the steward from and after the confirmation of the apportionment, but so nevertheless as not to affect the interests of any steward in office at the time of the passing of this act, who shall hold his office for life or during good behaviour, or of any steward of a manor so in office as aforesaid, where the usage shall have been such as, in the opinion of the said commissioners, to lead to a just expectation that the steward will hold his office during his life or good behaviour, and such agreement may provide for the costs of the proceedings under this act, subject to the approbation of the said commissioners: Provided always, that in case of doubt or difference as to the sufficiency of interest of the parties to any such agreement, the decision of the said commissioners thereon shall be conclusive; and every agreement so made and executed, and confirmed in manner hereinafter mentioned, shall be binding on all persons interested in such manor or lands.

15. *Commutation may take place in consideration of a fine on death or alienation.*—And be it enacted, that such agreement for a commutation of the rights of the lord as aforesaid, may also be for the payment of a fine on death or alienation, or at any fixed period or periods, to be agreed upon by the parties, every such fine to be fixed by the agreement or to be subject to increase or diminution by the valuers, to be appointed as hereinafter mentioned, to such an amount per centum as shall be expressed in such agreement, but in either case to be valued in bushels of wheat, barley and oats, in the same manner as the tithe commutation rent-charge, and to be subject, in like manner as such rent-charge, to variation according to the prices ascertained by the advertisement provided for by the said act for the Commutation of Tithes in England and Wales, to be published next before the time of the happening of the act or event on which the fine shall become payable.

16. *Provisional agreement.*—And be it enacted, that the said lord and tenants present at such meeting shall elect a chairman (the vote of the lord being reckoned as equal to one-third of the whole number of votes, and the votes of the tenants being reckoned individually), who shall forthwith proceed to ascertain the number and interest of the lord and tenants then present in person or by their

agents; and in case it shall thereupon appear that the persons present at such meeting are not sufficient in number and interest, or a sufficient portion are not willing to make and execute such an agreement as shall be binding on all persons interested therein, it shall be lawful notwithstanding, for any number of the persons present to make and execute a provisional agreement of the like form and tenor; and every such provisional agreement which shall be executed within six calendar months from the day of such meeting by such persons as would have been sufficient in number and interest to make a binding agreement at such meeting shall be as binding as if the same had been sufficiently executed at such meeting.

17. *Proportional interest how to be computed for the purpose of voting.*—And be it enacted, that the proportional interest of the tenants, so far as relates to their power to make such agreement or provisional agreement, or to appoint valuers, or to give any notice to the said commissioners or assistant commissioners, as hereinafter provided, shall be computed in manner hereinafter mentioned: (that is to say) the interest of every tenant liable to fines arbitrary or uncertain in amount shall be estimated according to the proportional sum at which their lands shall be rated to the relief of the poor in the parish or place wherein the same are situated, and if any lands shall not be distinctly rated, then in respect of such lands according to the rules by which property of the same kind is in the said parish rated to the relief of the poor; and when such rating cannot be ascertained, then the interest in respect thereof shall be estimated at such proportion, not exceeding two-thirds of the last fine arbitrary paid on admission to the said lands, as the chairman at the said meeting shall consider nearest in amount to the yearly value of the same lands; the interest of tenants liable to fines certain shall be estimated according to such rule as shall be specially made for the occasion by the said commissioners on the application of the lord or tenants by whom the meeting shall have been called, or for want of such rule, as if the annual value of their respective lands were one half of the amount of such fine certain; the interest of tenants liable to heriots in kind shall in respect of such liability be estimated according to such rate as shall be specially made for the occasion by the said commissioners on such application as aforesaid, or for want of such rule, at one-fifth of the annual value of their respective lands as nearly as the same can be estimated by the chairman at any such meeting; and the interest of no person shall be computed in respect of a copyhold estate who has not been admitted tenant thereof according to the custom of the manor, or who has made an absolute surrender of all his estate and interest therein; and it shall be lawful for the said commissioners to make special rules respecting the computation of the interests of tenants liable to fines certain, heriots, rights in timber, and other manorial rights (if any) which may be the

subjects of any proposed commutation, on the application, or with the consent of a majority of the parties interested, and previous to the execution of any agreement, and such rules shall have the same force as if made by this act.

18. *Meeting may be adjourned, notice being given.*—And be it enacted, that in case an adjournment of the said meeting shall, for any cause, be desired by a majority in number of the persons attending such meeting in person, or by attorney, as aforesaid, the chairman shall adjourn the meeting to any time and place then by him to be declared, and so from time to time in case the same shall be in like manner desired by a majority in number of the persons attending such meeting as aforesaid; and notice of every such adjourned meeting shall be given under the hand of the chairman, and shall be affixed in a conspicuous place on the outside of the building in which such meeting or the last adjournment thereof, shall have been holden, and shall be once advertised in a newspaper as aforesaid; and the like order of proceeding shall be observed at every such adjourned meeting and every thing done at any such adjourned meeting shall be as valid as if done at the original meeting.

19. *Agreement to be in the form which commissioners shall direct.*—And be it enacted that every such agreement shall bear date on the day on which the first signature is attached thereto, or to the memorandum or minute thereof, and shall be in such form as the commissioners shall from time to time direct, or to the like effect.

20. *Commissioners to frame and circulate forms, &c.*—And be it enacted, that the said commissioners shall frame and cause to be printed, so soon as conveniently may be after their appointment or beginning to act, forms of notices and agreements, and such other instruments as in their judgment will further the purposes of this act, and supply all or any of such forms to any person or persons requiring the same, or to whom the said commissioners shall think fit to send the same, for the use of any lord or copyholder or other tenant desirous of putting this act into execution.

21. *Suits and differences as to rights or boundaries may be referred to arbitration.*—And be it enacted, that if any action or suit shall be pending touching the right to or amount of any fines, heriots or other manorial rights, or touching the situation or boundary of any manor or lands, or if any difference shall arise whereby the making and executing of any such agreement, or of any enfranchisement under this act, shall be hindered, it shall be lawful for the lord and tenants or claimants, being parties to such action, suit or difference, to submit the same to reference, by any writing under their respective hands, containing an agreement that such submission shall be made a rule of any of her Majesty's courts of law, upon such terms of reference as the said parties may agree upon; and the decision of the arbitrator or arbitrators named in the said reference shall be final and conclusive on all per-

sons; and when such arbitrator or arbitrators shall be appointed for the purpose of determining any unknown or disputed boundary of any manor or lands, he or they shall and may have and exercise all the powers which may be exercised by any referee appointed under and by virtue of the provisions of an act passed in the third year of the reign of his late Majesty king William the fourth, intituled, "An Act to authorize the identifying of lands and other possessions of certain ecclesiastical and collegiate corporations:" provided nevertheless, that no person, being owner of an estate in a manor or lands less in the whole than an immediate estate of fee simple or fee tail, or corresponding copyhold estate, shall be empowered to submit to any such reference, so as to bind any person in reversion, remainder or expectancy, without the consent of the said commissioners; and that it shall be lawful for the said commissioners, if they shall think fit so to do, but not otherwise necessary, to direct that any person in reversion, remainder or expectancy, whom they shall deem to be interested therein shall be made a party to such reference.

22. *Consents to be required to agreement.*—Provided always, and be it enacted, that in every case in which any manor or lands shall be held under any archbishop, bishop, dean, dean and chapter, archdeacon, or any ecclesiastical or other corporation, or any body politic, and in every case in which any such person, ecclesiastical or other corporation, or body politic, or patron of any living, shall be interested in any manor or lands to the extent of one-third of the value thereof, computed as to such lands as aforesaid, or if it shall appear to the said commissioners that the interests of such person, ecclesiastical or other corporation or body politic, would be affected by the commutation or enfranchisement under this act, no agreement to be made and executed under this act shall be deemed to be executed by the said lord and tenants unless the consent of such person, ecclesiastical or other corporation, or body politic, shall be given under the hand or seal of the person, ecclesiastical or other corporation, or body politic or patron of such living, giving the same; and such consent shall be annexed to the agreement for commutation or enfranchisement, and taken as part thereof.

23. *Agreement to be confirmed by the commissioners.*—And be it enacted, that every such agreement as soon as may be after it shall have been executed by the lord and tenants to the number and value as aforesaid, shall be sent by the chairman of the meeting, or by the person in whose custody it shall then be, to the office of the said commissioners; and the said commissioners, by themselves, or by some assistant commissioner shall cause inquiry to be made, and shall require such proof as will be satisfactory to them, whether or not it ought to be confirmed: and if they shall be satisfied that it ought to be confirmed, the said commissioners shall confirm the agreement under their hands and seal, and shall add to such agreement the date of the confirmation, and shall publish the fact of such confirmation, and the

date thereof, within the manor, in such way as they shall deem fit; and every such confirmed agreement shall be binding on all persons interested in the said manor and on all persons interested in the said lands, and shall not be liable to be invalidated by reason of any doubt or question as to the sufficiency in the number and interest of the parties entering into such agreement: Provided always, that it shall be lawful for the said commissioners, by themselves, or by some assistant commissioner, at their discretion, if the circumstances of the case shall in their opinion require it, to direct that the rent-charge to be paid by any particular tenant or tenants shall not commence until the period of the next act or event on which the fine or other manorial right for which such rent-charge shall be commuted would have become due and payable, and that the amount of such rent-charge shall be then increased in such proportions as the said commissioners or assistant commissioners shall think proper.

24. *Appointment of valuers.*—And be it enacted, that at the said meeting for commutation, or at some adjournment thereof, or at some other meeting to be called in like manner, either before or after the confirmation of the agreement, (such agreement not being an imperfect provisional agreement) valuers shall be appointed, in manner hereinafter mentioned, for the purpose of making such valuations, apportionments, and schedules as shall be required for carrying the said agreement into execution; and in case such commutation shall be agreed to be made in consideration of a rent-charge payable to the lord, and fixed by the agreement, the tenants present at such meeting shall appoint a valuer or valuers; and in case the majority in respect of number, and the majority in respect of value (computed as aforesaid) shall not agree upon the appointment, then they shall appoint two or such other even number of valuers, as shall be then agreed on by such tenants, half of such number of valuers to be chosen by a majority in respect of number, and the other half by a majority in respect of value (computed as aforesaid), of the tenants then present in person, or by their agents; but in case such commutation shall be in consideration of a rent charge, the amount whereof shall not be fixed by the agreement but shall be liable to increase or diminution by the valuers or shall be left to be determined by them, with the approbation of the said commissioners, then and in either of the said cases one half of the number of valuers shall be appointed by the lord, or the majority of the lords in value, and the other half by the tenants in manner aforesaid, or such respective parties may concur in the appointment of one or more valuer or valuers; and any question which may arise as to the regularity of the appointment of such valuer or valuers shall be decided by the said commissioners.

25. *Valuation.*—And be it enacted, that as soon as may be after the choosing such valuers, and after the confirmation of the said agreement, the said valuers shall apply to the said commissioners for instructions as to the duties

to be performed by them pursuant to such agreement, and having received such instructions shall proceed to make and send in to the said commissioners such valuations, apportionments and schedules as they shall require; and whenever an even number of valuers shall be chosen, it shall be lawful for the said commissioners, by any writing under their hands and seal (to be communicated either together with or as soon as conveniently may be after the said instructions,) to appoint a fit and proper person to be an umpire between such valuers; and the decision of the umpire on the questions in difference between the valuers shall be binding on them respectively and shall be adopted by them respectively in their valuation.

26. *Valuers may enter on lands, &c.—Must make a declaration.*—And be it enacted, that the said valuers and umpires respectively (if as to such umpires it shall become necessary for them to act respectively), and their agents or servants, at all reasonable times, may, on producing an authority under the hand and seal of the said commissioners or assistant commissioners, enter upon any of the lands and premises affected by such agreement, and make an admeasurement, plan, and valuation or inspection of the same, without being subject to any action or molestation for so doing: Provided always, that no valuer or umpire shall be capable of acting until he shall have made and subscribed before the said commissioners or some assistant commissioner, or a justice of the peace, or a master extraordinary in Chancery, a solemn declaration to the same purport and effect as the declaration hereinbefore directed to be made by the said commissioners, substituting only the proper description of the office held by such person for that of a commissioner; which declaration it shall be lawful for the said commissioners, assistant commissioner, justice of the peace, or master extraordinary to administer; and every such declaration so made and subscribed shall be countersigned by the person before whom the same shall have been made, and shall be sent by him to the office of the said commissioners.

27. *Steward to furnish information and make schedule.*—And be it enacted, that for the purpose of enabling the said valuers to make such valuations, apportionments and schedules, and otherwise to facilitate commutations under this act, the steward of the manor for the time being shall, on request by the said valuers, or any of them respectively, or the chairman of any meeting or adjournment thereof, or of any three tenants having signed the notice of an intended meeting, make out so far as his information may enable him, within such period and in such manner as the said commissioners shall direct, a correct statement in writing of the several tenants of the said manor, and of the respective lands to which they shall respectively stand admitted for life or otherwise, or which they shall hold, subject to fines, heriots or other manorial rights, and of the amount to which the same lands are rated to the relief of the poor, so far as he can distin-

guish or estimate the same, and of the amounts received by the lords on account of the three last heriots in respect of any such lands, and of any other information which the said commissioners shall from time to time direct, and which as such steward he can procure and produce without prejudice to the rights and interests of the lord of the said manor; and the said steward shall produce the said statement for inspection at any such meeting or adjournment thereof, on being paid for the same as hereinafter provided, and shall deliver to or allow any extracts thereof as to such rating to be taken by the chairman of such meeting, and shall, upon request by the said valuers, and being paid as aforesaid, deliver to them respectively a true copy of such statement, or the parts thereof required by them; and for preparing such statement the said steward shall receive from the person requiring the same such a remuneration as shall have been agreed upon, or in case of difference, such a sum as the said commissioners shall, under their hands and seal, order and direct, and for copies or extracts thereof the sum of four-pence for every seventy-two words; and the said steward for the time being, or, if there shall be no steward, the lord shall, within three calendar months after the signature of the said agreement, or whenever required by the said commissioners, make out and send to the said commissioners such information and in such form as the said commissioners shall from time to time require, and as the said steward, or if there shall be no steward, the lord, can procure and produce, without prejudice as aforesaid, and for the purpose of ascertaining the ages of any tenants, it shall be lawful for the steward or lord to apply personally, or by letter sent by post, and addressed to the particular tenant at his usual place of abode, for such information; and every tenant refusing or neglecting for the space of twenty-one days to give such information, shall not be entitled to have any amendment made in such schedule by reason of any error the steward may commit in inserting such age, or to object to the apportionment hereinafter mentioned by reason of such mis-statement of age, unless the said commissioners shall see cause otherwise to direct; and any tenant falsely stating his or her age shall forfeit and pay such sum, not exceeding the sum of ten pounds, as the said commissioners shall under their hands order and direct, and which shall be added to the amount to be payable by him or her under the apportionment, and recoverable in like manner, and applied in and towards the costs of apportionment or other costs of commutation as the said commissioners shall direct, or shall be recoverable by distress or action as hereinafter provided with respect to costs payable under this act; and the said steward shall receive for the said schedule, and the expense of application as to ages and rates, such sum as the said commissioners shall think fit and proper to allow for the same, with the other costs of apportionment; and in like manner such steward or lord shall from time to time make out and

send to the said commissioners, upon request, all statements, schedules and information which they shall from time to time require from the court rolls, quit rentals and other documents of the like nature; and in case default shall be made by the steward or lord in complying with any such request, he shall forfeit such sum and sums, not exceeding the sum of five pounds, as the said commissioners shall from time to time in their discretion order and direct, and which sums shall be deducted from any compensation to be awarded or sum to be allowed to him under this act.

28. *Valuers to take particular circumstances of each case into consideration.*—And be it enacted, that when the said valuers shall be so instructed by the said commissioners, pursuant to such agreement, they shall accordingly proceed in the discharge of the duty intrusted to them; and in every case in which the agreement shall have provided that the rent-charge, or (where the commutation shall be for the payment of a fine on death or alienation) that the commutation fine shall be subject to increase or diminution by the valuers, or that the amount of the rent-charge shall be fixed by them, the said valuers shall proceed to determine, within the limit prescribed by the agreement, the amount of increase or diminution, or shall ascertain the amount to be paid by way of rent-charge (as the case may require); and the said valuers shall afterwards, or where the rent-charge shall be specifically stated in the agreement, and shall not have been apportioned thereby, shall at once proceed to apportion the total sum to be paid by way of rent-charge; and in regulating the amount of rent-charge, and also in making such apportionment, the said valuers shall take into account the facilities for improvement, and all other circumstances relating to the land which shall be included in such commutation, and shall make due allowance for the same; and shall also take into consideration the relative situations of the lord when tenant for life or having other limited interest, and the respective rights of such lord and of those entitled in remainder or reversion to the manor, and what portion of such rent-charge should be paid to such lord, being tenant for life or having other limited interest, and how the residue thereof should be applied, and whether the whole of such rent-charge, or whether only a part thereof, should be paid to the lord, being tenant for life or having other limited interest in the manor; and when the tenant shall have only a life estate or other limited interest in his land, it shall be lawful for the said valuers to state what proportion (if any) of the rent-charge to be paid in respect of such land should be deferred until the next act or event in which a fine would become due to the lord; and the said valuers shall also state generally whether, and in what cases, in their opinion, the payment of the rent-charge or of part thereof, should be deferred, and shall state such other particulars, as may enable the said commissioners to defer payment of the whole rent-charge, or of any part thereof, if they shall

think fit; and the said valuers shall state the amount of the fine (not exceeding five shillings) to be thereafter payable upon death or alienation in respect of each tenement; and they shall, if so instructed by the commissioners, make an apportionment of the costs of the proceedings under this act, subject likewise to the approbation of the said commissioners; and it shall also be lawful for the said valuers to make such other allowances as they shall deem just for the particular circumstances of the several tenements, so that such allowances shall not be inconsistent with the said agreement for commutation, and the instructions received from the said commissioners.

29. *Schedules of valuation to be deposited for inspection, and meeting appointed for hearing objections.*—And be it enacted, that as soon as the valuations, apportionments or schedules to be so made by the said valuers as aforesaid, shall have been sent to the said commissioners, they shall cause a copy of the same to be deposited in the hands of the steward for the time being of the manor, or if there shall be no steward, with the lord of the said manor, or with such person as they shall see fit, for the inspection of all persons interested therein within the manor, or within a parish wherein part of the manor is situated, and shall forthwith cause notice to be given through such steward or lord, or in such manner as to the said commissioners shall seem fit, of such copy being so deposited for inspection, and which inspection shall at all reasonable times, up to the meeting after mentioned, be allowed by such steward or lord without fee (and for every neglect to allow which such steward or lord shall forfeit such sum, not exceeding twenty shillings, as the said commissioners shall order and direct, and which shall be deducted from the sums payable to such steward or lord under this act); and in such notice such place and time, or places and times, shall be fixed as the said commissioners shall think fit (the first not earlier than twenty-one days from the first giving such notice) for holding a meeting for hearing and determining objections to the said valuation, or the amount of costs claimed by the said valuers, or to the said steward's schedule, by any parties interested; and the said commissioners, or some assistant commissioner (to whom respectively such steward or lord shall, on the day before or previous to the commencement of such first meeting as required, deliver such copy of the said valuations, apportionments or schedules, with all notices received, as hereinafter provided), shall at such meeting or meetings hear and determine any objection which may then and there be made against the said valuations, apportionments or schedules respectively, or any part thereof, or adjourn the further hearing thereof, if they or he shall think proper, to a future time, and may, if they or he shall see occasion, direct any further valuations, apportionments or schedules, inquiries or statements to be made, and from time to time fix further meetings for the hearing and determining objections, of which further meetings, when not

holden by adjournment, notice shall be given in manner hereinbefore directed with regard to the original meeting: Provided, that unless upon cause shewn to the satisfaction of the said commissioners, no person shall be entitled to make any objection to any such valuations, apportionments or schedules, who, being the lord of the said manor, shall not have left notice in writing of such intended objection at the office of the said commissioners ten days before the time fixed for any such meeting (exclusive of the day of leaving such notice, but inclusive of the day of meeting), or who, being any person other than the lord of the said manor, shall not have left notice in writing of such intended objection with or for the steward or lord of the said manor, with whom such copies shall be deposited, at the place of deposit thereof, ten days before the time fixed for any such meeting (exclusive of the day of leaving such notice, but inclusive of the day of meeting), forms of which notices shall be forwarded by the said commissioners to the said steward or lord, or other person, and shall be by him delivered to any interested party requiring the same; and which last mentioned notices the said steward or lord, or other person shall, immediately on receipt thereof, annex to such copies, or one of them, and shall note such objection on the copy to which the same relates, and allow the inspection of the said notices, in like manner and under the like penalty as aforesaid; and any default in any of the several matters and things hereinbefore required shall also subject such steward or lord, or other person, to the like penalty; and when the said commissioners, or assistant commissioner shall have heard and determined all such objections, they and he are and is hereby required to cause such valuations, apportionments or schedules to be amended as occasion shall require, and also from time to time, whether at such meeting or not, to amend the steward's schedule, so as to show all deaths and alterations in ages of the tenants or otherwise taking place after making out the same, and before the apportionment hereinafter provided for, on being satisfied by the affidavit or declaration (as the case may be) of the steward, sworn or taken before a master extraordinary in Chancery, or by such other proof as they or he may deem sufficient that such amendments and alterations are required.

30. *Expenses of proceedings under the act.*—And be it enacted, that the expenses of the proceedings for effecting any commutation under this act shall (except in cases where from special causes the said commissioners shall direct otherwise, and then as they shall direct, and except in cases where the parties to the said agreement shall therein otherwise provide, and then as they shall have provided) be payable in manner following; (that is to say) where the valuers shall be appointed by the tenants, the costs of the valuations, apportionments and schedules shall be paid by the tenants included in the commutation, in rateable proportion to the sum charged on their lands respectively under and by virtue of this

act; but where the valuers shall be appointed by the lord and tenants as aforesaid, then if not more than two shall be appointed, the lord shall pay half the costs, and the tenants as aforesaid shall pay half; and where more than two valuers shall be appointed, the lord shall pay one-third, and the tenants as aforesaid shall pay two-thirds; and in all cases of dispute or difference as to the amount of the costs, or the persons on whom any costs should fall, the said commissioners shall have power to decide the same.

31. Schedule to be made by the commissioners.

—And be it enacted, that forthwith after receipt of the valuations, apportionments or schedules so settled, the said commissioners shall cause a schedule of apportionment to be made, wherein shall be stated the name or description, and the true or estimated quantity in statute measure, of the several lands to be comprised in the apportionment, and shall set forth the names and descriptions of the several proprietors and occupiers thereof, and the schedule of apportionment shall also state the amount of rent-charge charged upon the said several lands, or where the commutation shall be for a fine payable on death or alienation, the amount of commutation fine to become payable in respect thereof upon death or alienation, and the periods at which the several rent-charges shall become due and payable; and in cases of commutation for a rent-charge, such schedule shall also state the amount of fine (not exceeding five shillings) to be thenceforth payable upon death or alienation in respect of each tenement; and such schedule shall further state to whom and in what right the same shall be respectively payable; and the said schedule shall contain all such other awards, orders and declarations as shall be required for carrying the provisions of this act into execution.

32. Schedule of apportionment to be inspected, errors pointed out, and schedule then confirmed.

—And be it enacted, that the said commissioners shall forthwith, after making such schedule, cause a copy thereof to be deposited with the steward, lord or other person as aforesaid, for inspection within the manor, or within some parish where part of the manor is situate, by any parties interested, and give notice of such power to inspect, and which inspection during such period as the said commissioners shall direct shall be allowed as aforesaid, under the penalty aforesaid, recoverable as aforesaid; and at the expiration of that period the said steward, lord or other person as aforesaid, shall return the same copy or copies to the said commissioners, together with any notice he may have received during that period, pointing out any errors therein, and a statement of any errors which he may have discovered therein; and the said commissioners shall forthwith inquire into and rectify any such errors therein, and shall cause the said schedule of apportionment to be ingrossed on parchment or paper, and annex thereto any agreement, schedules, maps, plans, or other documents or writings required for elucidation thereof, and shall con-

firm such apportionment under their hands and seals, and shall add thereto the date of such confirmation.

33. Copies to be deposited with steward and clerk of the peace.—And be it enacted, that two copies of every confirmed instrument or schedule of apportionment and confirmed agreement, and schedules to be annexed thereto or written in the same book therewith, shall be made and sealed with the seal of the said commissioners, and one such copy shall be delivered to the steward of the manor, to be deposited and kept with the court rolls thereof, and the other copy shall be deposited with the clerk of the peace for the county or jurisdiction within which the said manor, or the greater part thereof in value, computed as aforesaid, shall be situated, to be by him and his successors in office kept with the papers and books of the clerk of the peace for the time being; and all persons interested therein may have access to the said copies respectively, and shall be furnished with copies of or extracts from any such copy on giving reasonable notice to the party having the custody of the same, and on payment of two shillings and sixpence for each inspection, and after the rate of two-pence for every seventy-two words contained in such copy or extract; and every recital or statement in, or agreement, schedule, map, plan, document or writing annexed to such confirmed apportionment, shall be deemed satisfactory evidence of the matters therein recited or stated, or of the accuracy of such map or plan; and such deposit shall be notified by an advertisement or otherwise, as the said commissioners may from time to time direct.

34. Notice to parties.—And be it enacted, that the said commissioners, if they shall see fit, before confirming any agreement, valuation, assessment, schedule or apportionment, may require notice thereof to be given in such manner as they shall direct to the person next in remainder, reversion or expectancy of an estate of inheritance in any manor or lands, or any other person to whom they may think notice ought to be given, and may by themselves or by some assistant commissioner hear and determine any objection made to such confirmation by any person so interested therein.

35. Commissioners may correct errors with consent.—And be it enacted, that it shall be lawful for the said commissioners to correct or supply any manifest error or omission in any agreement, valuation, assessment, schedule or apportionment, at any time after the same shall respectively have been made or confirmed, with the consent in writing of all the parties affected by such error or omission, but not otherwise.

36. Lands to be discharged from rents, fines, and heriots now payable, and a rent charge and fixed fine to be paid in lieu thereof.—And be it enacted, that from the first day of January next following the confirmation of every such apportionment, the lands of the said manor shall be absolutely discharged from the payment of all the lord's rents, fines and heriots

(save and except in the case of a commutation of a rent-charge, a fixed fine not exceeding the sum of five shillings, to be stated in every such apportionment as aforesaid, and which shall be payable to the lord in every case of death or alienation), and from the lord's right of timber, and any other right of the lord which may be the subject of commutation, and instead thereof, there shall be payable thenceforth, or from such time as shall be fixed by the said commissioners to the person in that behalf mentioned in the said apportionment, the yearly sum of money mentioned therein, where the same shall not exceed twenty shillings, and in other cases a yearly sum of money which shall be deemed to be of the value of such number of imperial bushels and decimal parts of an imperial bushel of wheat, barley and oats respectively, as such sum would have purchased if equal third parts thereof had been invested in the purchase of those respective descriptions of grain, at the prices ascertained by the advertisement provided for by the said act for the commutation of tithes in England and Wales, next preceding the passing of this act; (that is to say) at the price (for wheat) of six shillings and eleven-pence three farthings per bushel; (for barley) of four shillings and one penny per bushel; and (for oats) of two shillings and ten-pence three farthings per bushel; such respective yearly sum to be payable instead of the said rents, fines and heriots, and other rights as aforesaid, in the nature of a rent-charge issuing out of the lands charged therewith, and such yearly sum shall be payable by two half-yearly payments on the first day of July and the first day of January in every year, the first payment (except where deferred by the said order of the said commissioners) being made on the first day of July next after the lands shall have been discharged from rents, fines and heriots and other rights as aforesaid; and such rent-charge may be recovered at the suit of the person entitled thereto, by distress and entry, as hereinafter mentioned; and after every first day of January the yearly sum of money thenceforth payable in respect of such rent-charge, where it shall exceed the sum of twenty shillings, shall vary so as always to consist of the price of the same number of bushels and decimal parts of a bushel of wheat, barley and oats respectively, according to the prices ascertained by the then next preceding advertisement; and any person entitled from time to time to any such varied rent-charge shall have the same powers for enforcing payment thereof as are hereinafter contained concerning the original rent-charge; and that whenever the commutation shall be in consideration only of a fine to be payable upon death or alienation, the amount of the fine to be mentioned in the apportionment (if the same shall not exceed twenty shillings), and in other cases the value of the respective quantities of wheat, barley, and oats, which equal third parts of such fine would have purchased at the respective prices per bushel hereinbefore set forth, such value to be ascertained by the prices stated in any such advertisement so provided

for as aforesaid, next preceding the event or act upon which the fine shall have become payable, shall be paid to the person in that behalf mentioned or described in the apportionment, and shall be recoverable by him in like manner as any fine upon death or alienation is now by law recoverable.

37. *Schedule or apportionment to specify in what events any rent charge is to be increased or diminished.*—Provided always, and be it enacted, that in every case in which by the agreement entered into as aforesaid, any rent charge or rent charges shall have been left subject, in certain events, to increase or diminution, the schedule of apportionment shall set forth the events on the happening of which such increase or diminution is to take place, and the amount or rate of increase or diminution respectively.

38. *If valuers be not appointed within six months or valuation be not made within that period, or if any valuer shall die, commissioners may appoint.*—And be it enacted, that if upon the expiration of six calendar months after the confirmation of any agreement to be made as hereinbefore mentioned, no valuers shall have been appointed, or their valuation apportionments, or schedules (as the case may be) respectively shall not have been made and sent to the office of the said commissioners, or if any valuer appointed under or by virtue of this act shall die or become incapable of acting, it shall be lawful for the said commissioners from time to time to appoint such competent person or persons as they shall deem fit as valuer or valuers, with the like powers and duties, and whose costs and expences shall be payable in like manner as is hereinbefore provided with respect to valuers to be appointed and acting under any such agreement for commutation as aforesaid.

39. *Commissioners may hear and determine disputes.*—And be it enacted, that if any action or suit shall be depending touching the right to or amount of any fines or other manorial payments or incidents (except mines and minerals), or any question shall arise thereon, it shall be lawful for the said commissioners or assistant commissioner to appoint a time and place in or near the manor for hearing and determining the same, and to inquire into, hear and determine such right or amount, or such question or questions as aforesaid, and the decision of the said commissioners or assistant commissioner at such meeting, or any adjourned or renewed meeting, shall, subject to the provisions hereinafter contained, be binding and conclusive on all persons to whom twenty days' notice of the time, place and intent of such meeting shall have been given or left at their usual place of abode, or left with the occupying tenant of the lands to which such meeting shall relate, his, her and their heirs, executors, administrators and assigns, and the successors of any body politic or corporate; and such occupying tenant shall forthwith send such notice by post or otherwise to the party for whom the same was left, and in default of so doing, shall be liable to the pe-

nalty of not less than five pounds and not more than twenty pounds, to be recovered before two of her Majesty's justices of the peace, on summary application in manner hereinafter mentioned, and shall also be liable to pay and make good to such party all damage which he may sustain by such default, to be recovered with full costs of suit, in an action in any of her Majesty's Courts of law at Westminster: Provided always, that if any such decision shall, directly or indirectly, affect any right to mines or minerals, such decision, so far as it relates to any such right, shall be null and void, and of no effect whatever, either at law or in equity.

40. *Subject to appeal by issue at law, or in case stated.*—Provided always, and be it enacted, that any person claiming to be interested in any lands, who shall be dissatisfied with any such decision of the said commissioners or assistant commissioner, may, if the yearly value of the payment to be made or withdrawn according to such decision shall exceed the sum of twenty pounds, cause an action to be brought in any of her Majesty's Courts of Law at Westminster against the person in whose favour such decision shall have been made, within three calendar months next after such decision shall have been notified in writing, in such manner as the said commissioners or assistant commissioner shall direct, to the parties interested therein, or to their known agents, in which action the plaintiff shall deliver a feigned issue, whereby such disputed right may be tried, and shall proceed to a trial at law of such issue at the sittings after the term, or at the assizes then next or next but one after such action shall have been commenced, to be holden for the county within which the lands, or the greater part thereof, are situated, with liberty, nevertheless, for the Court in which the same shall have been commenced, or any Judge of her Majesty's Courts of Law at Westminster, to extend the time for going to trial therein, or to direct the trial to be in another county, if it shall seem fit to such Court or Judge so to do; and every defendant in any such action shall enter an appearance thereto and accept such issue; but in case the parties shall differ as to the form of such issue, or in case the defendant shall fail to enter such appearance or accept such issue, then the same shall be settled under the direction of the Court in which the action shall be brought, or by any Judge of her Majesty's Courts of Law at Westminster, and the plaintiff may proceed thereon in like manner as if the defendant had appeared and accepted such issue: and the parties in such action shall produce to each other their respective attorneys or counsel, at such time and place as any Judge may order, before trial, and also to the Court and jury upon the trial of any such issue, all books, deeds, papers and writings, terriers, maps, plans and surveys relating to the matters in issue, in their respective custody or power; and it shall be lawful for the Judge by whom any such action shall be tried, if he shall think fit, to direct the jury to find a verdict, subject to the opinion of

the Court upon a special case; and the verdict which shall be given in any such action, or the judgment of the Court upon the case subject to which the same may be given, shall be final and binding upon all parties thereto, unless the Court wherein such action shall be brought shall set aside such verdict, and order a new trial to be had therein, which it shall be lawful for the said Court to do, if it shall see fit: Provided also, that in case any such decision shall involve a question of law only, and the parties in difference shall be agreed upon the facts relating thereto, and whereon such decision shall have been founded, the said commissioners or assistant commissioner, at the request of the person dissatisfied (such request to be made in writing within three calendar months after such decision, and at least fourteen days previous notice in writing of such request to be given in like manner to the other parties in difference, or to their known agents), shall direct a case to be stated for the opinion of such one of her Majesty's Courts of Law at Westminster as the said commissioners or assistant commissioner shall think fit; which case shall be settled by them or him, or under their or his direction, in case the parties differ about the same, and may be set down for argument, and be brought before the Court in like manner as other cases are brought before the Court; and the decision of such Court upon every case so brought before it shall be binding upon all parties concerned therein: Provided always, that after such verdict given, and not set aside by the Court, or after such decision of the Court, the said commissioners or assistant commissioner shall be bound by such verdict or decision; and the costs of every action, or of stating such case, and obtaining a decision thereon, shall be in the discretion of the Court in or by which the same shall be decided, which may order the same to be taxed by the proper officer of the Court; and the like execution may be had for the same as if such costs had been recovered upon a judgment of record of the said Court.

41. *Proceedings not to abate by death of parties.*—And be it enacted, that no proceedings of or before the said commissioners or assistant commissioner, or in any action, or in any case stated, or reference in pursuance of this act, shall abate or cease by reason of the death of any person interested therein.

42. *In case of death of parties before actions brought, &c., the same to be brought and carried on in their names.*—And be it enacted, that if any person in whose favour any such decision of the said commissioners or any assistant commissioner shall have been made shall die before any such action shall have been brought or case stated, and before the expiration of the time hereinbefore limited for that purpose, it shall be lawful for any person who might have brought such action or have had such case stated against the person so dying to bring or have the same, within the time so limited as aforesaid, nominally against such person as if living, and to serve the said commissioners or assistant commissioner with process and no-

tices relating thereto, in the same manner as the person deceased might have been served therewith if living; and it shall be lawful for every person entitled to the benefit of such decision as aforesaid, or in case of any such person being a minor, idiot, lunatic, feme covert, beyond the seas, or labouring under any other legal disability, the guardian, trustee, committee of the estate, husband, or attorney respectively, or in default thereof, such person as may be nominated for that purpose by the said commissioners, and whom they are hereby empowered to nominate, under their hands and seal, to appear and defend such action or argue such case; and proceedings shall be had therein in the like manner, and the rights of all persons shall be equally bound and concluded by the event of such action or the decision of such case, as if such person had been living or free from disability; and the costs of every such action or case shall be in the discretion of the Court as aforesaid.

43. *Power to examine witnesses, call for papers, &c.*—And be it enacted, that the said commissioners or any assistant commissioner may, by summons under their or his hands or hand, require the attendance of all such persons as they or he may think fit to examine upon any matter brought before them or him, or respecting which they or he have or hath power to act as hereinbefore mentioned, relating to any such commutation as aforesaid, or to any enfranchisement in pursuance of the provisions hereinafter contained, and also make any inquiry and call for any answer or return as to such matter, and also administer oaths, and examine all such persons upon oath, and cause to be produced before them or him, upon oath, all deeds, documents and writings, books, court rolls, rentals, contracts, agreements, accounts, writings, papers, maps, plans and surveys, or copies thereof respectively, in anywise relating to any such matter: Provided always, that no such person shall be required, in obedience to any such summons, to travel more than ten miles from the place of his abode to give evidence, or produce any deeds, papers or writings relating to the title of any lands, unless such production shall appear to the said commissioners or assistant commissioner essentially requisite in making the inquiries to be made under this act.

44. *Expenses of witnesses, &c.*—And be it enacted, that the said commissioners or assistant commissioner, in any case where they or he may see fit, may order such expenses of witnesses, and of the production of any books, deeds, court rolls, contracts, accounts or writings, maps, plans and surveys, or copies thereof, and all other expenses (except the salaries or allowance to any of the said commissioners or assistant commissioner provided for as aforesaid) incurred in the settlement of any suit or difference, or in the hearing or determining any objection, valuation, schedule or apportionment before the said commissioners or assistant commissioner, to be paid by such parties interested in the production thereof respectively, or in the event of such suit, difference

or objection, and to such person or persons and in such proportions as the said commissioners or assistant commissioner may think fit and reasonable.

45. *Tenant paying rent-charge to be allowed the same in account with his landlord.*—And be it enacted, that every tenant or occupier who shall pay any such rent-charge as aforesaid, or any expenses legally chargeable under this act upon the land of which he shall be such tenant or occupier, shall be entitled to deduct the amount from the rent payable by him to his landlord, and shall be allowed the same in account with his said landlord.

46. *Lands exempted from provisions of this act in certain cases.*—Provided always, and be it enacted, that in every case in which any tenant or occupier shall show to the commissioners that he holds copyhold lands for a term of years of a tenant of any manor at a lower rent than the sum about to be imposed on the same for commutation or enfranchisement, or for the expenses incurred under the provisions of this act, it shall be lawful for the said commissioners to declare all agreements entered into under the authority of this act, null and void so far as regards such lands, and such lands shall be exempted from the provisions of this act, unless the tenant on the court roll shall give such security for the payment of all sums so to be charged on such lands as shall be satisfactory to the said tenant or occupier, and to the commissioners.

47. *When rent-charge is in arrear for twenty-one days after half yearly days of payment, the person entitled thereto may distrain.*—And be it enacted, that in case the said rent-charge shall at any time be in arrear and unpaid for the space of twenty-one days next after any half-yearly day of payment, it shall be lawful for the person entitled to the same, after having given or left ten days' notice in writing at the usual or last known residence of the tenant in possession, to distrain upon the lands liable to the payment thereof, or any part thereof, for all arrears of the said rent-charge, and to dispose of the distress when taken, and otherwise to act and demean himself in relation thereto as any landlord may for arrears of rent reserved on a common lease for years, provided that not more than two years' arrears shall at any time be recoverable by distress.

48. *When rent-charge is in arrear for forty days after half yearly days of payment, and no sufficient distress on the premises, writ to be issued directing sheriff to summon jury to assess arrears.*—And be it enacted, that in case the said rent-charge shall be in arrear and unpaid for the space of forty days next after any half-yearly day of payment, and there shall be no sufficient distress on the premises liable to the payment thereof, it shall be lawful for any Judge of her Majesty's Courts of Record at Westminster, upon affidavit of the facts, to order a writ to be issued, directed to the sheriff of the county in which the lands chargeable with the rent-charge are situated, requiring the said sheriff to summon a jury to assess the arrears of rent-charge remaining unpaid, and

and taken to be applicable to the case of an enfranchisement under the provisions herein contained, save that the said commissioners shall not make any alterations or amendments in such schedule without the consent of the parties interested therein: Provided always that whenever the estate of any party to such enfranchisement shall be less than an estate of fee-simple in possession, or corresponding copyhold or customary estate, notice in writing shall be given by or on behalf of such party to the person entitled to the next estate of inheritance in remainder or reversion, in the manor or land to be affected by such enfranchisement, so that the assent or dissent or acquiescence of such person entitled in remainder or reversion, may be stated in writing to the said commissioners, when such a schedule of apportionment as aforesaid, or when such conveyance, deed or assurance as hereinafter mentioned, shall be sent to them, but the said commissioners shall notwithstanding cause such further notices to be given, and such other enquiries to be made as they shall deem fit before confirming such apportionment, or consenting to such conveyance, deed or assurance. Provided also that in case the person so next entitled in remainder or reversion as aforesaid, shall be a minor, idiot, lunatic, feme covert, or under any other legal disability, or shall be beyond the seas, such notice as aforesaid shall be given to the guardian, trustees, committee of the estate, husband, or attorney of such person respectively; or in default thereof or in case the person so entitled shall be unknown or not ascertained, then such notice shall be given to some person, to be nominated for that purpose by some writing under the hands and seal of the said commissioners, after due inquiry shall have been made by them as to the fitness of such person to judge of the propriety of assenting to or dissenting from any such agreement; and that in every case in which dissent in writing shall have been expressed, the commissioners shall withhold their confirmation of the apportionment, or their consent to the conveyance, deed or assurance hereinafter mentioned, until upon further inquiry they shall be satisfied that the agreement is not fairly open to objection.

57. *Mode of effecting such enfranchisement where the agreement shall not be entered into by all the tenants, or their number be less than twelve.*—And be it enacted, that if such agreement for enfranchisement shall not be entered into by all the tenants of the manor, or their number shall be less than twelve, or whatever may be their number, if the parties shall think fit, an enfranchisement may be effected, with the consent of the said commissioners, by such conveyance, deed or assurance as would or might be adopted for effecting such enfranchisement if the lord were seised of the manor for an absolute estate of inheritance in fee-simple in possession.

58. *Commissioners, before giving their consent, to satisfy themselves of the title to the manor; and the expenses of the investigation, as well as the general expenses, to be borne by*

the parties as may be agreed upon, and in default as the commissioners shall direct.—And be it enacted, that in every case in which any such agreement for enfranchisement shall be so entered into, and shall be proposed to be carried into effect by a schedule of apportionment, the said commissioners, before they shall signify their consent thereto, shall, upon the written request of any three or more tenants, parties to the agreement, but not otherwise, satisfy themselves, in such way and by such evidence as they shall see fit, of the title of the lord to the manor: and the expense of investigating the title to the manor, and the other expenses attending every such agreement, whether carried into effect by a schedule of apportionment, or otherwise, and the confirmation thereof and the schedule of apportionment (if any,) shall be borne by the lord and tenants, parties to such agreement, in such proportions as they may agree, or in default of agreement as the said commissioners may direct: Provided always, that the expenses payable by lords of manors having particular interests or being trustees shall, with any other expenses they may reasonably incur in or about any such agreement (the amount of such last mentioned expenses being subject to the approval of the said commissioners,) be paid out of the first monies to be received out of the enfranchisements to be effected under this act: Provided always that if the lord shall refuse to afford such information as may enable the commissioners to be satisfied of his title, or if the commissioners shall for any other reason not be satisfied of such title, the said agreement so entered into shall be null and void.

59. *Payment and application of purchase money where the lord's interest is a partial one, or he is under legal disability.*—And be it enacted, that in all cases in which the lord for the time being shall be only entitled to the manor for a limited estate or interest therein, or shall be under any legal disability, the sum or sums of money to be paid for enfranchisement shall be paid and applied in manner hereinafter provided for.

60. *Power to tenants to defer, in certain cases, the payment of a portion of the consideration for enfranchisement until the next event at which a fine would be payable.*—And be it enacted, that whenever by any such agreement as aforesaid which shall be proposed to be carried into effect by a schedule of apportionment it shall have been stipulated that any tenant shall be at liberty to defer the payment of a portion of the sum charged in respect of his lands, or any portion thereof, and such tenant shall give notice under his hand to the steward or lord, as hereinbefore directed with respect to notices in cases of commutation, of his desire to defer payment accordingly, at any reasonable time after the execution of any such agreement for enfranchisement, and before the delivery of the schedule to the commissioners, it shall be lawful for the said commissioners in their schedule of apportionment in every such case, and also (with the consent

of the lord) in the case of any such tenant giving notice as aforesaid, although no stipulation shall have been made by the agreement, to award that so much of the sum apportioned to any such tenant as shall have been charged for enfranchisement from fines or other manorial rights to which such tenant, if he possessed a life or other limited interest, would not have been liable thereafter during his tenancy, shall not be paid until the period of the next act or event on which a fine or other such manorial right would have become payable or due to the lord if the said lands had remained unenfranchised, and that within six months after such act or event the said sum shall become payable, with such addition thereto as the said commissioners shall direct.

61. *When sum becomes due, lord entitled to the rents and profits of the land, and may proceed to obtain possession, &c.*—And be it also enacted, that as soon as the said sum, with such addition thereto, shall become payable, the lord or other person for the time being entitled to the benefit thereof shall become entitled to the rents and profits of the land in respect of which the same shall be due, unless and until he shall have received notice that such sum is become payable so that he may proceed to recover the same; and it shall be lawful for such lord or other person to proceed to obtain possession of the said rents and profits, in like manner as if the said land had been lawfully seized into the hands of the lord for some default of the tenant; provided that notice in writing, stating the nature of such act or event as aforesaid, delivered by or on behalf of the tenant to the lord or other person entitled, or the clerk of the peace or other persons having the custody of the schedule of apportionment, shall be deemed sufficient notice that the said sum is payable; and, as soon as the said sum is become payable, the land in respect of which the same shall be due, and the beneficial owner thereof for the time being, shall be subject to the like remedies for the recovery thereof, and such sum shall become applicable in like manner, subject to any such allowance thereout as hereinafter provided, as if such land had not been previously enfranchised, and the payment for the same had not been deferred.

62. *Power of tenants to defer payment of consideration for enfranchisement.*—And be it enacted, that for the purpose of freeing other tenants from the inconvenience to which in certain cases they might be subjected by an immediate liability to the payment of the sums to be agreed to be paid to the lord of the manor for enfranchisement under this act, it shall be lawful for such tenant, at any reasonable time after the execution of any such agreement for enfranchisement as aforesaid (to be fixed by the said commissioners, and in default of their fixing any other limit at any other time, or until within ten days next previous to the delivery by the steward to the commissioners of the schedule of such apportionment), to declare, by notice under his hand, to be delivered to the lord or steward as hereinbefore provided

with respect to notices in cases of commutation, his desire that such compensation money should remain a charge on the lands affected thereby for any number of years not exceeding fourteen years, or, if a tenant for life, for the whole period of his life and one year longer, and which notice the steward shall forthwith, or with the said schedule of apportionment, send to the said commissioners; and thereupon the said commissioners, with the consent of the lord, but not otherwise, shall insert in a column of such apportionment to be appropriated to such purpose the number of years or period for which such charge is to be continued, and thereupon (subject as after mentioned) no proceedings shall be instituted during such time or period to enforce payment of the principal money so apportioned: Provided nevertheless, that interest after the rate of four pounds per centum per annum thereon shall be payable and paid half-yearly on the days to be mentioned in such apportionment, or, if not mentioned, then at the expiration of each half-year, computed from the date thereof; and nothing herein contained shall extend to protect any tenant or other person from such proceedings, in case interest for one year and a half shall remain due on the principal sum apportioned or awarded, or on any part thereof, to the amount of one half: Provided also, that during the term or period so fixed, the lord shall not be compellable to receive payment of the principal money, without receiving twelve calendar months' notice of the intention to pay off the same; and in case the interest on such principal sum, or any part thereof, shall at any time be in arrear or unpaid for thirty days after any half yearly payment shall be due as aforesaid, it shall be lawful for the lord or party entitled for the time being to receive such interest money, to levy the same by distress and sale of the goods on the lands and tenements enfranchised and affected by such enfranchisement, or any of them, as fully and in like manner as if the same had been rent in arrear, and subject to recovery by distress.

63. *Where payments are deferred by tenants, provision as to lords being tenants for life.*—And be it enacted, that where the lord of the manor shall be only entitled for a limited estate or interest therein, and the said commissioners shall have deferred payment of any sum or sums for enfranchisement under the powers hereinbefore contained, so that instead of such lord receiving a certain sum, or the interest thereon forthwith, he or the lord for the time being shall become entitled at a future period to the said deferred sum, with an addition thereto on account of the fine which would have become payable on the act or event fixing such period, or with an addition thereto on any other account, it shall be lawful for the said commissioners to award and direct that out of the money payable or chargeable forthwith for enfranchisement of any lands in such manor a certain sum of principal money shall be paid to or charged in favour of such lord as if he were absolutely seized as tenant in fee

simple in possession of such manor, and such principal sum shall be paid or charged accordingly; and in case it shall happen that there shall be no money payable forthwith for enfranchisement, or not sufficient for making such allowance to the lord as aforesaid, or with the consent of the lord in any case, it shall be lawful for the said commissioners to award and direct that so much of the sum payable at a future period as they shall think adequate to his interest shall become his absolute property, and shall be paid or charged accordingly.

64. *Substituted titles.*—And be it enacted, that all lands which shall be enfranchised under this act shall be deemed to be held under the same title as that under which the same were held at the time of such enfranchisement, and shall not be subject to any estates, rights, titles, interests, incumbrances, claims or demands affecting the manor of which the same were holden.

65. *General expenses.*—And be it enacted, that the expenses of valuations, including the expense of making copies of apportionments, schedules, and all other documents required under the provisions of this act, and all other expenses necessary in the making any commutation or enfranchisement as aforesaid, except when otherwise provided by this act, shall be paid by the tenants, or by the tenants and lords, in such proportions as the said commissioners shall in the confirmed apportionment or otherwise, under their hands and seal, direct; and that if any difference shall arise touching the amount of the said expenses, or the share thereof to be paid by or to any person, it shall be lawful for the said commissioners or assistant commissioner to certify under their or his hands or hand the amount to be paid by or to such person; and in case any person shall refuse or neglect to pay the amount so certified or specified in such apportionment to be payable from him immediately after notice thereof, then, upon production of such certificate, or of either of the deposited copies, under seal, of the said apportionment, before two of her Majesty's justices of the peace for the county, riding, division or jurisdiction wherein the manor to which the same relates, or the greater part thereof in value as appearing in such apportionment, is situate; and on proof of such refusal or neglect, such justices are hereby authorized and empowered, by warrant under their hands and seals, to cause the same, and the costs of application and distress, to be levied by distress and sale of the goods of the person liable to pay the same, and to render the surplus (if any), after deducting the costs of distress and sale, to the person distrained upon.

66. *Action for expenses.*—And be it enacted, that if such expenses shall not be levied under the said distress within two months after the said warrant shall be granted, it shall be lawful for the person entitled to the said expenses (if the same shall, with the costs of application to such justices, amount to forty shillings or upwards), and his executors or administrators, to recover the same expenses and costs, with

full costs of suit, in an action of debt in any of her Majesty's Courts of Law at Westminster, against the party named in such warrant and certificate or apportionment as aforesaid, his executors or administrators, in which action such certificate or deposited copy of apportionment shall be satisfactory evidence of the amount of such expenses so awarded by the said commissioners or assistant commissioner, and of the same being due for and to the parties therein named; and the certificate of such justices under their hands on such warrant shall in like manner be evidence of the amount of costs of such application; and the production of such warrant (which in all such cases shall be allowed, and such certificate given by such justices), shall be satisfactory evidence of the non-recovery of such expenses and costs respectively under a distress.

67. *Expenses of trustees.*—And be it enacted, that every tenant, being a trustee, or not beneficially interested in the lands of which he stands admitted tenant to be affected by any commutation or enfranchisement under this act (save as against an unadmitted mortgagee) shall be entitled to recover in like manner by distress or action respectively all expenses, costs and charges which he may have to pay under or by reason of any such certificate, apportionment, distress or action, from the person beneficially interested at the date of such apportionment in the said lands, his executors, administrators or assigns, or by a like distress on the said lands, and the occupier thereof shall be entitled to deduct any such payments out of any rent then or subsequently due; and should any dispute arise as to any trusteeship or right to such recovery, the same shall be determined by the said commissioners or assistant commissioner in like manner as is hereinbefore provided with respect to other causes of dispute or difference arising under this act, and their or his certificate shall be deemed satisfactory evidence of the facts therein stated; and the like evidence shall be produced before such justices or in such action as is hereinbefore provided in other cases of distress.

68. *Copyholders having limited interests may charge costs in certain cases.*—And be it enacted, that any tenant having a limited interest, and who shall pay any such expenses or costs, may, with the consent of the said commissioners under their hands, and by a simple entry on the court rolls of the manor, (and for which entry the steward shall only charge thirteen shillings and four pence, and which shall not be subject to any stamp duty), charge such expenses and costs, with interest thereon, at the rate of four pounds per centum per annum, on the copyhold lands to which the same shall relate, but so nevertheless that the principal charge on such lands shall be lessened in every year following such charge by one-twentieth part at least of such original charge thereon, and shall be subject to previous mortgages.

69. *Expenses payable by lords of manors.*—And be it enacted, that any lord of a manor having a particular interest, or being a trustee,

and who shall (in the case of a commutation) pay any such expenses or costs, may, with the like consent of the said commissioners, charge such expenses and costs, together with the expenses he may reasonably incur in employing agents to protect his interests or otherwise, with interest thereon at the rate of four pounds per centum per annum, on the manor to which the same may relate, but so nevertheless that the principal charge on such manor shall be lessened in every year following such charge by one-twentieth part at least of such original charge thereon, and shall be subject to previous mortgages: Provided always, that the amount of such last-mentioned expenses shall have been previously submitted to, and shall have received the approval of the said commissioners or of an assistant commissioner.

70. *Lands to be charged with enfranchisement considerations as on mortgage in fee.*—And be it enacted, that from and immediately after the date of the final confirmation of the apportionment, in the case of any such enfranchisement as aforesaid, or from the date of the conveyance, deed or assurance by which the enfranchisement shall be effected (as the case may be), the several and respective lands shall stand charged and chargeable with the respective sums mentioned in such apportionment to be payable to the lord and steward or other officers respectively, with lawful interest for the same from the day mentioned in the said apportionment, until payment thereof respectively; and until such respective payment or payments the person or persons for the time being seised of the manor shall be deemed to stand seised of the said lands as mortgagee in fee thereof, for the benefit of the lords as to the sum payable to them, and of the said steward or other officers as to the sums payable to him or them, and subject to the power of continuing the charge as hereinbefore provided; and that it shall and may be lawful for the person so seised, or the lords or stewards respectively in his name, from time to time to adopt such means and proceedings as a mortgagee in fee of freehold lands is entitled to for the enforcing payment of such principal sums and interest, with the like right to obtain payment of all attendant and incident costs and expenses; and the lord shall have power to distrain on the lands in respect of which the said sum or sums shall be payable for the purpose of recovering payment of the interest that shall be due thereon, as fully and in like manner as if the same had been rent in arrear.

71. *To be first charges.*—And be it enacted, that every such last mentioned sum by this act, charged on any lands shall be a first charge on such lands, and shall have priority over all mortgagees, charges and incumbrances whatsoever affecting such lands, tithe rent-charge excepted, notwithstanding such mortgages, charges and incumbrances shall have been or shall be respectively made and created before such sums respectively shall be charged on such lands.

72. *Power to mortgage.*—And be it enacted, that it shall be lawful for any tenant whose

lands shall be enfranchised under this act, to charge the same (or any of them, provided he shall hold the whole thereof under the same right and the same estate), with the payment of such sums as aforesaid (and the costs of such charges), and lawful interest thereon respectively, to any person who shall advance and lend such sums on the security of the lands so to be charged, and his executors, administrators and assigns, and for securing the payment thereof, with such interest, to demise the said lands by way of mortgage for any term of years to the person who shall lend such sums, his executors, administrators and assigns, or to such other person as he or they shall appoint, so as such demise be made with a proviso or condition, declaring that such term shall be void, on payment of the amount thereby secured, with interest thereon, at a time to be therein appointed; and such charge shall have the like priority with the original charge under this act, and with the powers and rights to which a first mortgagee would as mortgagee by demise be entitled.

73. *To whom monies for enfranchisement from lord's rights to be paid.* *Money paid for enfranchisement, amounting to 200l. in certain cases, to be paid into the Bank of England, under 1 Geo. 4. c. 35.*—And be it enacted that all monies to be paid under this act for enfranchisement from the lord's right shall be paid to the lord of the manor, his heirs or assigns, where he shall be absolutely seised as tenant in fee-simple in possession of the manor, or where, as trustee for sale or otherwise, he has power to give an effectual discharge for such monies; and where such lord for the time being shall be only entitled for a limited estate or interest therein, or shall be under any legal disability, such money, subject to any allowance which may be made thereon in respect of deferred payments hereinbefore mentioned, shall, in case the same shall in the whole amount to or exceed the sum of two hundred pounds, with all convenient speed be paid into the Bank of England, in the name and with the privity of the Accountant General of the Court of Exchequer, to be placed to his account there ex-parte "The Copyhold Commissioners," pursuant to the method prescribed by an act passed in the first year of the reign of his late Majesty King George the Fourth, intitled, "An Act for better securing monies and effects paid into the Court of Exchequer at Westminster, on account of the suitors of the said Court, and for the appointment of an Accountant-General and two Masters of the said Court, and for other purposes," and the general orders of the said Court, and without fee or reward, and shall, when so paid in, therein remain until the same shall, by order of the said Court, made in a summary way upon petition to be presented to the said Court by the person or persons who would have been entitled to the rents and profits of said manor had no such enfranchisement been made as aforesaid, be applied in the purchase of or redemption of the land-tax, or in or towards the discharge of any

debt or other incumbrance affecting the said manor, or affecting other lands standing settled therewith to the same or the like uses, trusts, intents or purposes, as the said Court of Exchequer shall authorize to be purchased or paid, or such part thereof as shall be necessary, or until the same shall, upon the like application, be laid out by order of the said Court, made in a summary way as aforesaid, in the purchase of lands which shall be conveyed, limited and settled to, for and upon such and the like uses, trusts, intents and purposes as the said manor, or such of them as at the time of making such conveyance and settlement shall be existing undetermined and capable of taking effect; and in the meantime and until such purchase can be made, the same money may, by order of the said Court, upon application thereto, be invested by the said Accountant-General in his name in the purchase of Three Pounds per Centum Consolidated Bank Annuities, or Three Pounds per Centum Reduced Bank Annuities, or in Government or Real Securities; and in the meantime and until such annuities or securities shall be ordered by the said Court to be sold for the purposes aforesaid, or shall be called in or cancelled, the dividends or interest and annual produce thereof shall from time to time, by order of the said Court, be paid to the person or persons who would for the time being have been entitled to the rents and profits of the said manor had no enfranchisement been made as aforesaid.

74. *When less than 200l.*—Provided always, and be it enacted, that if any money to be paid for the enfranchisement from the lord's rights shall be less than the sum of two hundred pounds, and shall exceed the sum of twenty pounds, after such allowance for deferred payments as aforesaid, then the same shall, at the option of the respective parties for the time being entitled to the said manor, the right of which shall be enfranchised, or of their respective husbands, guardians or committees, in case of coverture, infancy, idiocy, lunacy or other incapacity, be paid into the Bank of England, in the name and with the privity of the said Accountant-General, and be placed to his account as aforesaid, in order to be applied in manner hereinbefore directed; or otherwise the same may be paid, at the like option, to two trustees, to be nominated by the respective parties exercising such option, and such nomination and approbation to be signified in writing under the hands of the nominating parties; and the money so paid to such trustees, and the dividends and produce so arising therefrom, shall be by such trustees applied in like manner as is hereinbefore directed with respect to the money to be paid into the Bank of England, in the name of the Accountant-General of the Court of Exchequer.

75. *When not above twenty pounds.*—Provided also, and be it further enacted, that when any money so to be paid as last hereinbefore mentioned shall not exceed the sum of twenty pounds for all the enfranchisements in

such manor, the same shall be paid, if the said commissioners shall so direct, to the respective parties for the time being entitled to the said manor, for his own use and benefit, or in case of coverture, infancy, idiocy, lunacy or other incapacity, then such money shall be paid, for their use, to their respective husbands, guardians, committees, or trustees; and in case any dispute shall arise as to the proper application, appropriation or investment of any enfranchisement money, according to the intention of this act, it shall be lawful for the said commissioners to decide such question, and their decision shall be final and conclusive thereon.

76. *In case enfranchisement money be paid to a lord, not entitled thereto.*—Provided always, and be it enacted, that if any principal money shall be paid for enfranchisement to the lord of any manor not entitled by the provisions of this act to receive the same, the land in respect of which such principal money shall have been so paid shall continue charged with the payment thereof in favour of the person legally or equitably entitled to the same, but with such remedies against the person who shall have wrongfully received such money as purchasers are entitled to by the rules of law or equity.

77. *Payments to steward.*—And be it enacted, that all sums payable under this act for compensation to the steward shall be paid to him, his executors or administrators.

78. *Receipts to discharge, &c.*—And be it enacted, that the receipts of the persons to whom any sums of money shall be paid pursuant to this act shall be sufficient discharges for the same, and the person making such payment shall not be liable to see to the application of any such sums, or be answerable for the misapplication or non-application thereof; and for the better evidencing such payment the steward for the said manor for the time being shall, as to steward's compensation forthwith after payment thereof, and as to the payments for enfranchisements from the lord's rights forthwith after production of receipt for the same, signed by the party entitled to sign the same, enter on the copy apportionment, to be deposited with him as aforesaid, a memorandum of such payment, and which memorandum shall, in like manner as such receipt, be deemed sufficient evidence of such payment, and discharge the lands and the person paying the same from the sums mentioned to be paid.

79. *After confirmation of the apportionment, &c. in cases of commutation, the customary modes of descent to cease, and the lands to descend, and to be subject to dower and curtesy, in like manner as freehold lands.*—And be it enacted, that from and after the final confirmation of the apportionment, in the case of any commutation under this act, or upon the execution of the deed whereby any voluntary commutation may have been effected, the several lands included in such commutation shall be held by copy of court roll, and shall be conveyed by surrender and admittance, in all cases in which the same shall have

been previously so held and conveyed respectively, and in all other cases shall be held and conveyed in such manner as the same are now by custom held and conveyed, and shall continue parcel of the same manors, as such lands would have been held of if such commutation had not taken place; but the same lands shall thenceforth cease to be subject to the customs of borough English or gavelkind, or to any other customary mode of descent, or to any custom relating to dower, or freebench or tennancy by the curtesy of England; and all the laws relating to descents, or to estates of dower, or estates by the curtesy of England, which shall for the time being affect and be applicable to lands held in free and common socage, shall thenceforth affect and be applicable to the lands included in every such commutation: Provided always, that nothing herein contained as to curtesy or dower or freebench, shall extend or be applicable to the case of any husband or widow who shall have been or shall be married before the final confirmation of the commutation apportionment, or the execution of such deed as aforesaid, or to alter or lessen, or in any way affect any right which the husband or widow of any person who shall be tenant of a manor at the time of the confirmation of the said apportionment would or might have had if such commutation had not been made.

80. *Gavelkind exempted from operation of act.*—Provided always, and it is hereby expressly enacted and declared, that nothing in this act contained shall extend, or be held, deemed or construed to extend in any respect to affect, alter, or vary the custom of gavelkind, as the same now exists and prevails in the county of Kent, but the same custom shall in every respect prevail and continue to prevail and be exercised in the said county in the same manner and to the same extent in all respects and particulars after this act shall have passed, as it has prevailed and existed heretofore, any thing herein contained notwithstanding.

81. *Lands to become freehold, subject, &c.*—Commonable rights to remain.—And be it enacted, that in the case of any enfranchisement under this act, from and after the final confirmation of the apportionment, or the execution of the conveyance (as the case may be), the several lands therein respectively comprised and enfranchised shall become and be in all respects of freehold tenure, but subject to the payment of the enfranchisement consideration, in favour of the lords and steward or other officer as aforesaid; and all mortgages affecting the same shall be deemed and become mortgages of the freehold of the same lands for a corresponding estate if such enfranchisement consideration shall be paid off, and if not so paid off, mortgages of the equity of redemption thereof, subject to such mortgage interest as aforesaid for securing such consideration: Provided always that nothing herein contained shall operate to deprive any tenant of any commonable right to which he may be entitled in respect of such lands, but such right shall

continue attached thereto notwithstanding the same shall become freehold: Provided also, that no such enfranchisement or conversion into freehold shall affect, except as aforesaid, any mortgage, or defeat the beneficial limitations of any will or settlement theretofore executed, or alter the descent or distribution of any estate or interest in land on the decease of any tenant or person entitled thereto in possession or remainder at the time of such enfranchisement or conversion.

82. *Other rights of lords not to be affected.*—And be it enacted, that no commutation under this act shall operate to affect any rights of lords of manors to easements, fairs, markets, appointments, franchises, royalties, rights, liberties and privileges of chase and free warren, hunting, hawking, fowling, and of chasing and killing game, and beasts of chase and free warren, and all ancient piscaries, fisheries and rights of fishing, or any rights in mines and minerals or quarries within or under the said lands and hereditaments, or any other manorial rights whatever, unless expressly commuted under this act: Provided always, that nothing in this act contained shall operate to authorize or empower any lord of any manor to inclose any common, or waste lands, or any part thereof.

83. *Restrictions as to this act.*—And be it enacted, that nothing herein contained shall operate to prevent any commutation or enfranchisement which may be made independently of this act, and that nothing in this act contained shall revive any right to fines or other manorial claims which now or hereafter shall be barred by any law in force for the limitation of actions or suits.

84. *Power to tenants to grant rights of way, &c. to lords of manors for mining purposes.*—And be it enacted, that, in aid of the reservation of the lord's rights in mines and minerals lastly hereinbefore contained, it shall be lawful for the tenants, upon any commutation or enfranchisement under this act, to grant to the lord of the manor such rights of entry and way and other easements, in or upon and through their respective lands, as may be requisite for the purpose of enabling the said lord, or his agents or workmen, the more effectually to win and carry away any mines or minerals under the lands of such tenants, or any of them; and that for the purposes of such grant, it shall be sufficient, in the case of a commutation, to state the fact of such grant, and the consideration (if any) to be payable for the same, in the agreement for commutation; but in the case of an enfranchisement of lands (subject to the lord's rights in mines and minerals), such rights of entry and way, and other easements, shall be reserved and granted in the enfranchisement conveyance.

85. *Courts of Equity may decree a partition of lands of copyhold or customary tenure.*—And whereas it is expedient that facilities should be afforded by Courts of Equity to parties desirous of obtaining a partition of their lands of copyhold or customary tenure, but doubts are entertained whether by the practice of such

Courts the same can now be obtained; be it enacted and declared, that from and after the passing of this act, it shall be lawful for any Court of Equity, in any suit to be thereafter instituted therein for the partition of lands of copyhold or customary tenure, to make the like decree for ascertaining the rights of the respective parties to the suit in such lands, and for the issue of a commission for the partition of the same lands, and the allotment in severalty of the respective shares therein, as, according to the practice of such court, may now be made with respect to lands of freehold tenure.

86. *Lords of manors or their stewards may, after 31st December, 1841, hold Customary Courts, although no copyhold tenant be present.*—And be it enacted, that after the thirty-first day of December, one thousand eight hundred and forty-one, it shall be lawful for the lord of any manor, or his steward, or the deputy of such steward, to hold a Customary Court for such manor, notwithstanding at the time of holding the same there shall not be any person who shall hold lands of such manor by copy of court-roll, and also notwithstanding, if there shall at the time of holding such Court be any person or persons who shall hold lands of such manor by copy of court-roll, there shall not be any such person present at such Court, or there shall not be more than one such person present at such Court; and every Court so holden shall be deemed and taken for all purposes whatsoever to be a good and sufficient Customary Court: Provided always, that no proclamation made at any Court so holden shall affect the right, title or interest of any person not present at the same, unless notice of such proclamation having been made shall be duly served, within one month after such meeting shall have been holden, on the persons whose right, title or interest may be affected by such proclamation.

87. *Lords or their stewards may, after 31st December 1841, make, out of the manors and out of Court, grants of lands to be held by copy of court roll, or according to custom.*—And be it enacted, that after the thirty-first day of December one thousand eight hundred and forty-one, it shall be lawful for the lord of any manor, or his steward, or the deputy of such steward, to grant, at any time and at any place, either within or out of such manor, and without holding a Court for such manor, any lands, parcel of such manor, to be held by copy of Court roll, or according to the custom of the said manor, which such lord shall for the time being be authorized or empowered to grant out to be held by copy of court roll, or according to such custom, so nevertheless that such lands be granted for such estate only, and to such person only, as such lord, steward, or deputy shall for the time being be authorized or empowered to grant the same.

88. *Lords or their stewards may, after 31st December 1841, grant admissions out of the manors and out of Court.*—And be it enacted, that after the thirty-first day of December one

thousand eight hundred and forty-one, it shall be lawful for the lord of any manor, or his steward, or the deputy of such steward, to admit, at any time and at any place, either within or out of such manor, and without holding a Court for such manor, any person as tenant to any lands, parcel of such manor, to be held by copy of court roll, or according to the custom of such manor, to and for which such person shall for the time being be entitled to be admitted.

89. *After 31st December 1841, every surrender, &c. delivered to the lord or steward, and every fact proved to the lord or steward, at any Court whereat a homage shall not be assembled, shall be forthwith entered on the Court rolls.*—And be it enacted, that after the thirty-first day of December one thousand eight hundred and forty-one, every surrender and deed of surrender which the lord shall be compellable to accept, or shall accept, and also every will and codicil, a copy of which respectively shall be delivered to the lord of the manor of which the lands affected by such surrender, deed of surrender, will and codicil are parcel, or to his steward, or the deputy of such steward, either at any Court holden for such manor at which there shall not be any homage assembled, or out of Court, and also every grant and admission by the lord of any manor, or his steward, or the deputy of such steward, pursuant to this act, shall be forthwith entered on the court rolls of the manor by such lord, or steward, or deputy; and every entry made on the court rolls of any manor pursuant to this present clause shall, for all purposes whatsoever, be deemed and taken to be an entry made in pursuance of a presentment made at a court holden for such manor by the homage assembled thereat; and the steward, or his deputy shall be entitled to the same fees and other charges for making such entry on the court rolls as he would have been entitled to in respect of such entry in case the same had been made in pursuance of a presentment made at a Court holden for such manor by the homage assembled thereat.

90. *After 31st Dec. 1841, presentment by the homage shall not be essential to the validity of an admission.*—And be it enacted, that, after the thirty-first day of December one thousand eight hundred and forty-one, it shall not be essential in any case to the validity of the admission of any person as tenant of any lands held of any manor by copy of court roll, or according to the custom of such manor, that a presentment shall be made by the homage assembled at any Court holden for such manor of the surrender, will, or other instrument, or fact, in pursuance or in consequence of which such admission shall have been granted.

91. *Lords of manors in certain cases not to grant common or waste lands without consent of homage of the manor.*—Provided always, and be it enacted, that where by the custom of any manor the lord of such manor is authorized, with the consent of the homage of such manor, to grant any common or waste lands of such

manor to be holden of the lord by copy of court roll, nothing in this act contained shall operate to authorize or empower the lord to grant any such common or waste lands without the consent of the homage assembled at a customary Court holden for such manor, nor shall any Court holden for such manor be deemed or taken to be a good or sufficient customary Court for such purpose unless the same shall have been duly summoned and holden according to the custom of such manor in such cases used and accustomed before the passing of this act, and unless there shall be present at such Court a sufficient number of persons holding lands of such manor by copy of court roll to constitute according to such custom a homage assembled at such Court.

92. *Power to lords to grant licences to tenants to alienate their ancient tenements in portions, where they are now restrained by the custom from so doing.*—And whereas by the custom of certain manors the lords are restrained from granting licences to their tenants to alien their ancient tenements, otherwise than by entireties; be it enacted, that, from and after the passing of this act it shall be lawful for any tenant of any such manor, by and with the licence of the lord of the manor, or the steward thereof, (which licence such lord is hereby authorized to give, or to empower the steward to give, by any writing under his hand, to be afterwards entered upon the rolls of the manor,) to dispose of his ancient tenement or any part thereof, by devise, sale, exchange, or mortgage, in such parcel or parcels as he shall think proper, but subject to the payment of such portion or portions of the yearly customary lord's rent payable for the whole of such ancient tenements as shall be set and apportioned upon such parcel or parcels by the lord of the manor of which such ancient tenement is holden, or his steward, or the deputy of such steward, and such parcel or parcels shall, except so far as the tenure or descent thereof shall be affected by this act, be held of the lord of the same manor in all respects, and shall be from time to time conveyed in such manner, as any such original tenement has by custom been held and conveyed.

93. *Agreements, &c. not to be liable to stamp duties.*—And be it enacted, that no agreement, award, schedule of apportionment, or power of attorney, made or confirmed or used under this act, shall be chargeable with any stamp duty.

94. *False evidence to be deemed perjury. Withholding evidence a misdemeanor.*—And be it enacted, that if any person under the provisions of this act shall wilfully give false evidence he shall be deemed guilty of perjury; and if any person shall make or subscribe a false affidavit or declaration for the purposes of this act he shall suffer the penalties of perjury; and if any person shall wilfully refuse to attend in obedience to any lawful summons of any commissioner or assistant commissioner, or to give evidence, or shall wilfully alter, withhold, destroy, or refuse to produce any book, deed, contract, agreement, account, or writing, terrier, map, plan, or survey, or any

copy of the same, which may be lawfully required to be produced before the said commissioners or assistant commissioner, he shall be deemed guilty of a misdemeanor.

95. *Limitation of actions against commissioners, assistant commissioners, justices, &c.*—And be it enacted, that no action or suit shall be commenced against any commissioner, assistant commissioner, justice of the peace, valuer, umpire, or surveyor, for any thing done under the authority of this act, until twenty-one days' notice thereof shall have been given in writing to the party against whom such action or suit is intended to be brought, or after sufficient satisfaction or tender of amends shall have been made to any party aggrieved, or after three calendar months shall have expired from the commission of the act for which such action or suit shall be so brought; and every such action shall be brought, laid, and tried in the county or place where the cause of action shall have arisen, and not in any other county or place; and if it shall appear that such notice of action or suit was brought before twenty-one days' notice thereof given as aforesaid, or that sufficient amends were made or tendered as aforesaid, or if any such action or suit shall not be commenced within the time before limited in that behalf, or such action shall be laid in any county or place other than as aforesaid, then the jury shall find a verdict for the defendant therein, or the Court, upon summary application by motion in any such suit, may dismiss the same against such defendant; and if a verdict shall be found for such defendant, or such suit shall be dismissed upon application as aforesaid, or if the plaintiff in such action or suit shall become nonsuit, or suffer a discontinuance of such action, or if upon any demurrer in such action or suit judgment shall be given for the defendant therein, then such defendant shall have costs, charges, and expenses as between attorney and client.

96. *Proceedings under this act not to be quashed for want of form, nor to be removed by certiorari.*—And be it enacted, that no order, adjudication, or proceeding made or had by or before the said commissioners or any assistant commissioner under the authority of this act, or any proceeding to be had touching any offender against this act, shall be quashed for want of form, or be removed or removeable by certiorari or any other writ or process into any of her Majesty's Courts of Record at Westminster or elsewhere.

97. *Certain provisions of this act to extend to crown manors and lands.*—And be it enacted, that the provisions of this act enabling tenants to grant rights of way or entry and other easements to the lord of the manor in or upon and through their respective lands for mining purposes; for enabling Courts of Equity to decree a partition of lands of copyhold or customary tenure; for enabling lords of manors or their stewards to hold customary Courts although no copyhold tenant be present, and for enabling lords or their stewards to make, out of the manors and out of Court, grants of lands to be held by copy of Court roll; for enabling lords

or their stewards to grant admissions out of the manors and out of Court; and for requiring every surrender, will, and codicil, a copy of which shall be delivered to the lord or steward, and every fact proved to the lord or steward at any Court whereat a homage shall not be assembled, to be forthwith entered on the court rolls; and determining that presentment by the homage shall not be essential to the validity of an admission, shall extend and apply to manors or lands vested in her Majesty in right of her crown and the Duchy of Lancaster, and to any enfranchisement of lands held of such manors to be effected under the powers given by any existing act or acts of parliament, and the stewards and tenants for the time being of such manors.

98. *Act to apply to crown lands only where expressly provided.*—And be it enacted, that, subject as is herein-before expressly provided, nothing in this act contained shall be taken to apply to any manors or hereditaments vested in her Majesty in right of her crown or of the Duchy of Lancaster.

99. *Act not to extend to the Duchy of Cornwall.*—And be it further enacted, that nothing in this act contained shall extend or be construed to extend to, or to prejudice or derogate from, the estate, right, title, interests, privileges, or authority of the Queen's most excellent Majesty, her heirs and successors, in right or in respect of her Duchy of Cornwall, or the possessions thereof, or of the Duke of Cornwall for the time being, nor at any time or times be admitted in any Court of law or equity, or otherwise construed as evidence upon any occasion to be admitted against or to affect in any manner such estate, right, title, interest, privileges, or authority of her Majesty, her heirs and successors, in right or in respect of her said Duchy of Cornwall or the possessions thereof, or of the Duke of Cornwall for the time being.

100. *Limits of act.*—And be it enacted, that this act shall extend only to England, Wales, and Ireland.

101. *Act may be altered this session.*—And be it enacted, that this act may be amended or repealed by any act to be passed in this present session of parliament.

102. *Interpretation clause.*—And be it enacted, that in the construction and for the purposes of this act, unless there be something in the subject or context repugnant to such construction, the word "manor" shall extend to a manor or reputed manor, of whatever tenure the same may be, or to such portion or portions of a manor as the said commissioners shall, by any order in writing under their hands and seals, with the consent of the lord of the manor, signified by writing under his hand and seal, direct to be considered as a manor for the purpose of effecting any commutation or enfranchisement under this act; the words "lord" and "steward" shall include the person or persons for the time being filling those respective characters, or acting in those respective capacities, whether those persons shall be rightfully or lawfully entitled to fill such characters

or act in such capacities, or not, and the word "steward" shall also include the clerk of any manor; the words "tenant" or "tenants" shall comprise all persons holding by copy of court roll, or as customary tenants, or holding lands subject to any manorial rights, and whether holden to them and their heirs, or whether granted to two or more to be holden in succession, or holden for life or lives or years; the words "land" or "lands" shall extend to and comprise lands holden by copy of court roll, or by custom of any manor, and lands holden of any lord of a manor in ancient demesne, and whether in fee or for life or lives, or for years; and shall also comprise all lands holden of a manor subject to any manorial rights, and shall extend to messuages, tenements, and corporeal or incorporeal hereditaments subject to manorial rights, or any undivided part or share therein; the word "enfranchisement" shall extend to and include the discharge of freehold lands from heriots and other manorial rights; the word "heriots" shall include money payments in lieu thereof; the word "rents" shall include "reliefs" and "services," not being service at the lord's Court; and the word "person" shall mean and include any body politic or corporate or collegiate, as well as an individual; and every word importing the singular number only shall mean and include several persons or parties as well as one person or party, and several things as well as one thing respectively, and the converse; and every word importing the masculine gender only shall mean and include a female as well as a male.

NEW BILLS IN PARLIAMENT.

ADMINISTRATION OF JUSTICE IN EQUITY AMENDMENT.

The Lord Chancellor's Bill, intitled "An act to amend an Act of the fourth year of her present Majesty, intitled, 'An act for facilitating the administration of justice in the Court of Chancery,'" recites that by 3 & 4 Vict. c. 94, it was among other things enacted, that the Lord Chancellor, with the advice and consent of the Master of the Rolls and the Vice Chancellor, or one of them, might and he was thereby required, within five years from the passing of the same act, to make certain rules, orders, and regulations (with reference to the forms and mode of proceeding in the said Court of Chancery), and otherwise as therein mentioned, and that all such rules, orders, and regulations should be laid before both houses of Parliament, if Parliament should be then sitting, immediately upon the making and issuing the same, or if Parliament should not be sitting, then within five days next after the meeting thereof; and that no such rule, order, or regulation, should have effect until each House of Parliament should have actually sat thirty-six days after the same should have been laid before each house of Parliament as aforesaid; and that every such

rule, order, or regulation so made, should from and after the time aforesaid, be binding and obligatory on the said court, and be of like force and effect as if the provisions contained therein had been expressly enacted by Parliament, unless the same should by vote of either house of Parliament be objected to: and that no rule, order, or regulation hath yet been made under the said recited act: and that it is expedient to alter and amend the said recited act in manner hereinafter mentioned: It is therefore proposed to be enacted, that so much of the said recited act as directs that no such rule, order, or regulation as aforesaid, shall have effect until each house of Parliament shall have actually sat thirty-six days after the same shall have been laid before each house of Parliament as aforesaid, shall from and after the passing of this act be and the same is hereby repealed; and that every such rule, order, or regulation made in pursuance of the said recited act shall, from and after the time in that behalf to be appointed by the Lord Chancellor, with such advice and consent as aforesaid, and if no time shall be so appointed then from and after the making thereof, be binding and obligatory on the said Court, and be of like force and effect as if the provisions therein contained had been expressly enacted by Parliament: Provided always, that if either of the Houses of Parliament shall, by any resolution passed at any time before such House of Parliament shall have actually sat thirty-six days after such rules, orders, and regulations shall have been laid before such House of Parliament, resolve that the whole or any part of such rules, orders or regulations ought not to continue in force, in such case the whole or such part thereof as shall be so included in such resolution shall from and after such resolution cease to be binding and obligatory on the said court: Provided also, that no such rule, order, or regulation as aforesaid shall by virtue of the said act be of the like force and effect as if the provisions therein contained had been expressly enacted by parliament, unless the same shall be expressed to be made in pursuance of the said act and of this act; and that every such rule, order, or regulation so expressed to be made in pursuance of the said act and of this act, which shall not be laid before both Houses of Parliament within the time by the said recited act limited for that purpose, shall from and after the expiration of such time be absolutely void and of no effect.

Besides the advantage proposed by this bill of enabling the orders to come into operation, without waiting for the sanction of parliament, it will have the effect of authorising the amendment of any orders. The consequence would otherwise have been that the orders, operating as an act of parliament, could not have been altered without the sanction of both houses.

PRINCIPAL AND FACTOR.

This bill, intituled "An Act to amend the Law relating to Pledges by Factors and Agents intrusted with Goods and Documents of Title for *bonâ fide* Advances," recites that by the 6 Geo. 4. c. 94, intituled "An Act to alter and amend an Act for the better Protection of the Property of Merchants and others who may hereafter enter into Contracts or Agreements in relation to Goods, Wares, or Merchandize intrusted to Factors or Agents," it is amongst other things enacted, that it shall be lawful to and for any person to contract with any agent intrusted with any goods, or to whom the same may be consigned, for the purchase of any such goods, and to receive the same of and to pay for the same to such agent; and such contract and payment shall be binding upon and good against the owner of such goods, notwithstanding such person shall have notice that the person making such contract, or in whose behalf such contract is made, is an agent, provided such contract or payment be made in the usual and ordinary course of business, and that such person shall not, when such contract is entered into or payment made, have notice that such agent is not authorised to sell the same or to receive the said purchase money.

And that the present course of trade renders it necessary and expedient for the safe and convenient conduct thereof, that the same protection and validity shall be extended and given to contracts for loans, liens, and pledges for advances upon goods and merchandizes so intrusted to agents and correspondents, and upon documents of title thereto, as by the said recited statute is given and applied to contracts of sale made by such agents, and also that the delivery of other goods or other documents of title, as hereinafter is particularly enacted and provided, shall be deemed to be an advance and good consideration for any such contract of lien and pledge: it is therefore proposed to be enacted, that from and after the passing of this act, all owners and consignors who shall intrust any factor or agent with the possession of any goods or merchandize, or with the documents of title thereto, shall, in all cases where such owner and consignors would by virtue of the said recited statute or otherwise be bound by a contract of sale of such goods and merchandize, be in like manner and to the same extent bound by and subject to any contract or agreement to pledge or give any lien upon such goods and merchandize, or upon the documents of title thereto, in consideration of any money or negotiable security, or exchange of goods and merchandize, or documents of title, as hereinafter is particularly enacted, *bonâ fide* advanced or delivered up upon the faith and security of such goods and merchandize or documents of title so pledged or subjected to lien, notwithstanding the person with whom such contract, agreement, or exchange shall be made shall have notice that such agent is not the owner of such goods, merchandize, or document of title.

2. That where any contract or agreement for pledge, lien, or securities as hereinbefore mentioned, shall be made in consideration of the delivery or transfer to such agent of any other goods or merchandize, or document of title, or negotiable security, upon which the person so delivering up the same had at the time a valid and an available lien and security for or in respect of a previous advance or advances of money or negotiable security, by virtue of some contract or agreement made with such agent, every such contract and agreement made by such agent, the same being *bond fide* on the part of the person with whom the same may be made, shall be deemed to be a contract made in consideration of an advance within the true intent and meaning of this act, and shall be as valid and effectual to all intents and purposes, and to the same extent, as if the consideration for the same had been a *bond fide* present advance of money or negotiable security; provided always, that the lien acquired under such last mentioned contract or agreement shall not exceed the value at the time of the goods and merchandize which, or the documents of title to which, shall be so delivered up and exchanged.

3. That this act, and every matter and thing herein contained, shall be deemed and construed to give validity to such contracts and agreements only, and to protect only such loans, advances, and exchanges, as shall be made *bond fide*, without notice that the agent making such contracts or agreements as aforesaid has not authority to make the same, or was acting *malâ fide* in respect thereof against the owner of such goods and merchandize; and nothing herein contained shall be construed to extend to or protect any lien or pledge for or in respect of any antecedent debt owing from any agent to any person with or to whom such lien or pledge shall be given, except as hereinbefore is provided; but that for the purpose and to the intent of protecting all such *bond fide* loans, advances, and exchanges as aforesaid, though made with notice of such agent not being the owner, and to no further or other intent or purpose, such agent shall be adjudged, deemed, and taken to be the true owner thereof.

4. That any bill of lading, India warrant, dock warrant, warehouse keeper's certificate, warrant or order for the delivery of goods, or any other document, evidence, and the possession or control of goods, or authorizing or purporting to authorize, either by endorsement or by delivery, the possessor of such document to transfer or receive goods thereby represented, shall be deemed and taken to be a document of title within the meaning of this act, and any agent intrusted as aforesaid, possessed of any such document of title, whether derived immediately from the owner of such goods, or obtained in the ordinary course of business by reason of having been intrusted as aforesaid with the possession of the said goods, or of any such other document of title thereof, shall be deemed and taken to have been intrusted with the possession of the goods represented

by every or any such document of title as aforesaid; and all contracts pledging or giving a lien upon every or any such document of title as aforesaid shall be deemed and taken to give and to create a lien upon the goods to which the same relates; and any agent in possession of such goods or documents shall be taken for the purposes of this act to have been intrusted therewith by the owner thereof, unless the contrary shall be shown in evidence by any person disputing such fact.

5. That nothing herein contained shall lessen, vary, alter, or effect the criminal or civil responsibility of an agent for any breach of duty or contract, or nonfulfilment of his orders or authority in respect of any such contract, agreement, lien, or pledge as aforesaid, or to prevent such owner from having the right to redeem such goods or documents of title pledged as aforesaid, upon repayment of the amount of the lien thereon, or restoration of the securities in respect of which such lien may exist, and upon payment or satisfaction to such agent, if by him required, of any sum of money for or in respect of which such agent would by law be entitled to retain the same goods or documents, or any of them, by way of lien as against such owner, or to prevent the said owner from recovering of and from such person with whom any such goods or documents may have been pledged, or who shall have any such lien thereon as aforesaid, any balance or sum of money remaining in his hands as the produce of the sale of such goods after deducting the amount of the lien of such person under such contract or agreement as aforesaid: Provided always, that in case of the bankruptcy of any such agent the owner of the goods which shall have been so redeemed by such owner as aforesaid shall, in respect of the sum paid by him on account of such agent for such redemption, be held to have paid such sum for the use of such agent before his bankruptcy, or in case the goods shall not be so redeemed the owner shall be deemed a creditor of such agent for the value of the goods so pledged at the time of the pledge, and shall, if he shall think fit, be entitled, in either of such cases, to prove for or set off the sum so paid, or the value of such goods, as the case may be.

6. That in construing this act the word "person" shall be taken to designate a body corporate or company as well as an individual, and that words in the singular number shall, when necessary to give effect to the intention of the said act, import also the plural, and *vice versa*, and words used in the masculine gender shall, when required, be taken to apply to a female as well as a male.

SUPERIOR COURTS.

Vice Chancellor's Court.

BANKRUPTCY.—INJUNCTION.—RECEIVER.

Where the surviving partner of a firm is appointed executor to his deceased partner, and continues to carry on the business for some time after the death of his deceased partner, but becomes bankrupt, the parties beneficially interested in the share of the stock and effects which belonged to such deceased partner, are entitled as against the bankrupt's assignees to an injunction, to restrain them from selling the partnership property and to a receiver.

The plaintiffs in this case were the widow and children of Mr. William Connell, who formerly carried on business as a coachmaker in conjunction with one Mr. Tapp. The partnership continued for ten years, ending in July, 1839, shortly after which Mr. Connell died, and thereupon Tapp continued to carry on the business, as was stated, on behalf of the defendants, on his own sole account, but, as was insisted by the plaintiffs, on account of the parties beneficially interested in Connell's estate, and in his character of executor.

Before the partnership commenced, Tapp had been twice a bankrupt, and the assignees under the second commission, having taken possession of all the partnership stock and effects, a bill was filed by the plaintiffs to restrain them from selling, or otherwise interfering with the partnership property; and on the 26th of March last an injunction was granted. A third commission having issued a few months ago, and the assignees under that commission having subsequently taken possession of the stock in trade and effects, the plaintiffs amended their bill by making those assignees parties, and now moved for an injunction and receiver as against them.

Jacob and Stevens for the plaintiffs contended that the bankrupt, being executor to his deceased partner, must be considered in the light of a trustee in respect of that portion of the stock and effects which belonged to him, and which could not, therefore, be considered within his order and disposition, so as to entitle the assignees under either of the commissions to claim them. It was necessary that a certain time should elapse after the death of Connell to admit of the property being converted and disposed of, and it could not be urged that any unreasonable delay had taken place in the endeavours to accomplish this object.

K. Bruce and Hopkins, for the assignees under the second commission, opposed the plaintiff's claim, and insisted that the claims of the creditors under that commission ought to be first satisfied.

Richards and Roupell, for the assignees under

the third commission, also opposed the motion. It was clear that the stock had been left in the possession of Tapp, not for the purpose of winding up the affairs of the partnership, but for his own benefit. [According to the articles of co-partnership between him and Connell, the survivor was to be at liberty to carry on the business for his own benefit,] which showed the intention of the parties, but the business was not even continued pursuant to the articles, for the partnership had determined by effluxion of time before Connell's death, which took place in 1839. The plaintiffs had never taken any pains to have the partnership affairs wound up, but had permitted the creditors to deal with Tapp as the owner of the stock and effects, a considerable portion of which, must have been sold and replaced since Connell's death. In *Jackson v. Irwin*, 2 Campb. 48, where the bankrupt had given a warrant of attorney to certain parties, who issued execution and placed the warrant in the hands of the bankrupt's shopman, who continued to carry on the business, it was held that the goods were in the order and disposition of the bankrupt, and passed to his assignees. The same principles were also acknowledged in *Butler v. Hobson*, 5 Bing N. G. 132; and in *Ex parte Enderby*, 2 Barn. & Cr., 389, the circumstances were very similar to those in the present case. With regard to the claim of the assignees under the second commission, that could not in any way be supported, for the bankrupt had obtained his certificate under it previous to the commencement of the partnership between him and Connell, which was more than ten years ago, so that it was much too late for them to say that they had not suffered the property in question to remain in the order and disposition of the bankrupt.

Bacon, for the bankrupt.

The Vice Chancellor said that the arguments urged on behalf of the assignees were sufficient of themselves to induce the Court to appoint a receiver, for it was evident there were many serious questions to settle between the parties claiming the property in question, and when there were such, the Court would not allow one party to have the whole management, to the exclusion of the rest. If the assignees under the fiat had not taken possession, Tapp would have been in the situation of a person who, not only had survived his partner, but, as executor of such partner, was doubly bound to see that the partnership property was properly applied, and disposed of. The bill was first filed to prevent Tapp's further interference, but a question afterwards arose between the assignees under the two commissions. It was said that the assignees under the second commission, were colluding with the plaintiffs to defeat the claim of the assignees under the third commission; but his

honour did not think there was any evidence of such collusion. The question was, whether the stock and other effects were within the order and disposition of the bankrupt, so as to render them liable to the claims of his assignees, and the moment the Court came to the conclusion that such claims were doubtful, which it must do in this case, a receiver ought to be appointed. The only question was as to the leaseholds, which his honour thought ought to be comprehended in the order, unless it could be shown that any portion of these belonged exclusively to Tapp.

Injunction and receiver accordingly.—*Connell v. Walker*, May 6th and 7th, 1841.

Rolls.

MORTGAGE.—FORECLOSURE.

In a suit for foreclosure against several mortgagors of the same property, the Court will not, in directing the usual accounts to be taken by the master, make any order for the adjustment of claims between the respective mortgagors, for payments alleged to have been made by them on account of the mortgaged property, but will leave them to be settled by independent proceedings.

The bill in this case was filed against two mortgagors of a property to which they were entitled as tenants in common, and certain persons claiming through them, and it prayed the usual reference to the master for taking an account of principle and interest due on account of the mortgage, and for a foreclosure.

Walker for one of the mortgagors, asked that a separate account might be taken of the amount due in respect of the moiety to which his client was entitled, and that an account might also be taken of the several payments made by him in respect of the mortgage, as he had made several payments for which he was entitled to a charge upon the estate after the amount due on the mortgage should be satisfied. He also wished the account asked by the plaintiff to be taken without prejudice to his client's claim against the other mortgagor.

Pemberton and Piggott, contra.

The Master of the Rolls said, that whatever payments had been made on account of the mortgage, either party would be entitled to take credit for before the master, but he could not mix up the claims of any of the defendants as between themselves, with that of the plaintiff, who was entitled to the usual decree for a foreclosure.

Cutham v. Watson, April 27th, 1841.

Queen's Bench.

[Before the Four Judges.]

MAGISTRATE.—JURISDICTION.

A magistrate must personally take any examination on which he is called on to issue

his warrant. If he does not, although he may as a magistrate have jurisdiction over the case, he will not have done enough to found his right to the exercise of that jurisdiction.

A warrant to a constable to apprehend A. B., and bring him before a justice "to answer all such matters and things as shall be objected against him on oath, by C. D.," is bad, and the magistrate who has issued it is liable in trespass.

Trespass for assault and false imprisonment. Pleas, not guilty by statute. At the trial before Mr. Justice Littleton at Lewes, it appeared that a woman had made a complaint, not on oath, to the defendant, that the plaintiff had committed an assault on her child. The defendant went to her house to take the examination of the child. His clerk accompanied him. He remained down stairs. The clerk went up stairs into the bedroom where the child was, and the door of the room being open, he administered an oath to the child, and took her examination. The defendant then issued his warrant in the following form: "To the constables of Whalesbone, in the county of Sussex, &c. I do hereby, in her Majesty's name, command you and every of you, upon sight hereof, to apprehend and bring before me, or some other of her Majesty's justices of the peace for the said county, the body of, &c. of whom you shall have notice to answer to all such matters and things as on her Majesty's behalf shall be objected against him on oath by M. A. W., of &c., single woman, for an assault committed on her, &c." Several objections were taken against this warrant, and among others that it was in form a general warrant, not describing any offence to have been committed, nor did it command the present plaintiff to be brought before the justices to answer any specific charge, but merely to answer all such things as should be objected against him. It was further objected that the justice had irregularly taken the examination, so that the whole proceeding on his part was void. A verdict was given for the plaintiff, and a rule had since been obtained for a new trial.

Mr. Peacock now showed cause.—The warrant is bad; there is no statement of any offence having been committed. The form in Burn shews such a statement to be necessary. The warrant is in form a mere order to bring a party before the justice to answer any thing that may be objected against him. Such an order is bad, it ought to state the particular case which the party has to answer, so that it may appear whether the matter is within the magistrate's jurisdiction.

Mr. Platt in support of the rule.—The warrant is sufficient. But if it is not, still the justice is protected, for the matter is within his jurisdiction. He has a right to commit by

* 2 Hale's Pleas of the Crown, 110.

parol where he is satisfied that an assault has been committed. There may be an irregularity in the warrant, but a mere irregularity will not make the justice responsible, if he has *bonâ fide* exercised his jurisdiction. In *Butt v. Conant*,^b a warrant like this was held sufficient. [Mr. Justice Coleridge.—But what is to be said as to the justice's clerk taking the examination?] He acts on the examination, and on finding it satisfactory he issues his warrant. [Mr. Justice Patteson.—But he ought to see the witness.] That is a mere irregularity, and that alone will not make the justice liable. The taking of an examination by the justice may be compared to the swearing of an affidavit in Court. Though expressed to be sworn before the Court or judge, it is in fact sworn before a clerk or other officer of the judge. But that does not invalidate it for any purpose whatever.

Lord Denman, C. J.—I am clearly of opinion that the warrant is insufficient. There is no statement of an information on oath, nor that the fact which is to give the justice jurisdiction was really committed. So that it is clearly unlawful. But then Mr. Platt has raised the point that though the warrant may be informal, yet if the justice has acted in the exercise of a jurisdiction clearly vested in him, he may be protected by the fact of his having done so. But whether that argument is rightly founded or not may depend on the question, not merely whether he has jurisdiction over the subject-matter, but whether he shews that jurisdiction to have existed, in fact, from the commencement of the proceedings. He must therefore shew the complaint to have been made, and shew that he acted on that complaint. On the face of this warrant that complaint does not appear to have been made. We have, in the evidence given in the cause, proof that the child's mother stated to the justice what had happened; but she did not state it upon oath. He went to her house, but he did not take down the statement of the child in writing. His clerk did, but that is not sufficient. The child was sworn, but not sworn and examined in the justice's presence; so that in no way whatever does he appear on the face of the warrant, nor even by the evidence, to have had jurisdiction over the personal liberty of the plaintiff with reference to this offence.

Mr. Justice Patteson.—The words in the warrant "for an assault" cannot be coupled with the preceding words containing the order to bring the plaintiff before the justice, so as to shew that he was to be brought before the justice on a distinct charge of assault. The warrant, therefore, is in fact a general warrant to bring the plaintiff before the justice to answer any matter of complaint that might then be brought against him. It is totally void on that ground. If it had recited that an assault had been committed, and had then directed the constable to bring before the justice this

person to answer all such matters as might then be preferred against him, I should think there is no one who would at the present day contend that such a warrant was sufficient. Then, again, it is said that though the warrant is informal, the magistrate is protected by the facts of the case. But as to the taking of the examination, it appears that in fact the magistrate did not rightly exercise that jurisdiction. He should have been careful not to commit the performance of his duty—of that duty which he himself ought especially to perform—to his clerk. The clerk taking the examination has been compared, in argument, to the swearing of an affidavit in Court. There is no similarity between them. The taking an examination is in fact the making of a charge; it is a matter, the doing of which ought to depend on the judgment and discretion of the magistrate; and in taking the examination the magistrate should see how the person making the charge behaves himself, and how far his conduct confirms or contradicts his statement. A duty of this sort must be performed by the justice, and cannot be committed to his clerk.

Mr. Justice Williams.—I am entirely of the same opinion. There is no comparison to be made between taking an affidavit and taking an examination. I was surprised to hear the comparison instituted. The affidavit speaks for itself. In the examination every thing may depend on what is said at the time of the examination, and on the mode in which it is said. The duty of the magistrate is to exercise his own discretion on these things, and he cannot confide this duty to his clerk. The clerk cannot hold the examination for the justice. The statement in this warrant does not amount to an allegation that the party was charged on oath with an assault. In every respect the warrant is defective, and the magistrate is responsible.

Mr. Justice Coleridge.—I am quite of the same opinion. A magistrate is not more protected when he invades the liberty of the subject, than is any other person, unless he has jurisdiction. He cannot direct a person to be taken into custody, unless a charge is made against that person on oath. On the face of the warrant nothing of that sort appears here. I am glad to have an opportunity of observing on the manner in which magistrates ought to discharge their duty, as I know that it is a common practice for them to proceed as in the present instance. The practice of swearing affidavits cannot be compared to that of taking an examination. One is a purely ministerial act, and the person making the affidavit says in it what he pleases, and its statements are afterwards to be considered by the Court: but with respect to taking examinations, the magistrate is bound to act on the answers given, and the manner in which those answers are given, must, in some instances, materially influence his judgment. When the party is brought before him on the warrant, will it be said that though he has not in person taken the examination of the complainant, he is, nevertheless, in a situation properly to determine whether

^b 1 Brod. & Bing. 548; 4 Moore, 195; G.W. 84.

he should admit the defendant to bail? I think the warrant itself insufficient; and am of opinion that the justice is not protected by the manner in which he has exercised his general jurisdiction. The rule for a new trial ought to be discharged.

Rule discharged.—*Caudle v. Seymour, Esq.* T. T. 1841. Q. B. F. J.

[Lord Denman, C. J.—Mr. Robinson (clerk on the Crown side) has just handed me the following note. A justice of the peace was convicted in this court, not many years ago, on an indictment for issuing a warrant, his clerk having taken the examination.]

CERTIORARI.

The Court will not hear an argument on a rule to set aside an order returned by the sessions, under a certiorari issued by this Court, no notice of the application having been served on the justices who made the order.

Mr. *Hodges* appeared to shew cause against a rule for quashing an order of sessions. He took a preliminary objection that no notice of this application had been served on the justices who made the order. A rule for a certiorari had been made absolute, and the order had been returned under the writ. The present rule to quash the order had then been obtained, but no notice of it had been served on the justices.

Mr. *Archbold*, *contra* was about to argue, that the order was altogether void.—He was stopped.

Per Cur.—This rule cannot be maintained, as the notice of it has not been served on the justices.

Rule discharged.—*The Queen v. Spackman, in the matter of the Blandford Roads*, T. T. 1841. Q. B. F. J.

Queen's Bench Practice Court.

DEPOSIT IN LIEU OF BAIL.—PAYMENT OUT OF COURT.—CONSENT.

Where money has been paid into Court in lieu of bail, and an award is made in the action for a sum less than that paid in, the Court will order so much to be paid out to plaintiff, but will not order the remainder to be paid out to defendant without consent of the plaintiff, he having further claims on defendant.

This was an action to recover a certain sum of money, alleged to be due from the defendant to the plaintiff. The defendant was arrested for a sum of 1000*l.*, and that amount he deposited, in lieu of bail, with the sheriff, pursuant to the 43 G. 3, c. 46, and that sum was paid into Court, pursuant to the 7 & 8 Geo. 4, c. 71, to abide the event of the suit. When the cause came on for trial, it was, along with all matters in difference, referred to an arbitrator. That gentleman made his award,

and he directed that a sum of 666*l.* 2*s.* 10*d.*, on account of the sum sought to be recovered in the action, should be paid out to the plaintiff. An application was made by the plaintiff that a sum to that amount should be paid over to the plaintiff.

Petersdorff appeared and consented to this application, but proposed to superadd the term that the remainder of the sum in Court should be paid out to the defendant.

Edwards, on the part of the plaintiff, objected to this arrangement being made. Further claims existed by the plaintiff on the defendant, and therefore no consent could be given to such a step.

Wightman, J., thought that without consent he could not make such an order as that proposed. The rule must, therefore, be absolute in its terms.

Rule absolute.—*House v. Steinkeller*, T. T. 1841. Q. B. P. C.

INDORSEMENT ON PROCESS.—SUMMONS.—ATTORNEY'S RESIDENCE.—JUDICIAL NOTICE.

If an attorney indorses his residence as of a particular place in a particular county, and it is suggested that there is no such place in that county, the Court will not take judicial notice that there is no such place in that county, but the fact must be brought before the Court by affidavit.

In this case an action was commenced by writ of summons. On it, the attorney for the plaintiff, in indorsing his name and place of abode, described himself as of "Featherstone Buildings, Holborn, in the county of Surry."

Heuton moved for a rule to shew cause why the service of the writ of summons should not be set aside, on the ground that there was no sufficient description of the attorney's address. There was no such place as "Featherstone Buildings, Holborn, in the county of Surry." No affidavit to that effect was produced. The fact of the place in question being in the county of Middlesex was notorious, and, therefore no necessity existed for producing such an affidavit.

Wightman, J., thought he could not take judicial notice of the locality of the attorney's residence. If the objection was to be rendered available, it could only be by means of an affidavit. The application, therefore, could not be granted.

Rule refused.—*Humfreys v. Budd*, T. T. 1841. Q. B. P. C.

CHANCERY SITTINGS,

After Trinity Term, 1841.

Before the Lord Chancellor.

AT LINCOLN'S INN.

Wednesday June 23 { First Seal—Appeal Motions and Appeals.

Thursday... 24 }
 Friday 25 }
 Saturday 26 }
 Monday 28 }
 Tuesday 29 } Appeals, Causes, Further
 Wednesday... 30 } Directions and Excep-
 Thursday.. July 1 } tions.
 Friday 2 }
 Saturday 3 }
 Monday 5 }
 Tuesday 6 }

Wednesday.... 7 { The Second Seal—Appeal
 Motions and Causes.

Thursday..... 8 }
 Friday 9 }
 Saturday 10 }
 Monday 12 }
 Tuesday 13 } Appeals, Causes, Further
 Wednesday... 14 } Directions and Excep-
 Thursday 15 } tions.
 Friday 16 }
 Saturday 17 }
 Monday 19 }
 Tuesday 20 }

Wednesday.... 21 { The Third Seal—Appeal
 Motions and Causes.

Thursday..... 22 }
 Friday 23 }
 Saturday 24 }
 Monday 26 }
 Tuesday 27 } Appeals, Causes, Further
 Wednesday... 28 } Directions and Excep-
 Thursday 29 } tions.
 Friday 30 }
 Saturday 31 }
 Monday August 2 }
 Tuesday 3 }

Wednesday.... 4 { The Fourth Seal—Appeal
 Motions and Causes.

Thursday..... 5 Petitions.

The Court will not sit after Tuesday the 10th of August.

His Lordship will hear Appeals and Causes between the last day of Term and the First Seal, at Lincoln's Inn, (House of Lords days excepted).

Before the Vice Chancellor.

AT LINCOLN'S INN.

Wednesday June 23 The First Seal—Motions.

Thursday.... 24 }
 Friday 25 }
 Saturday 26 }
 Monday 28 }
 Tuesday 29 } Pleas, Demurrers, Excep-
 Wednesday... 30 } tions, Causes, and Fur-
 Thursday.. July 1 } ther Directions.
 Friday 2 }
 Saturday 3 }
 Monday 5 }
 Tuesday 6 }

Wednesday.... 7 { The Second Seal—Mo-
 tions.

Thursday..... 8 }
 Friday 9 }
 Saturday 10 }
 Monday 12 }
 Tuesday 13 } Pleas, Demurrers, Excep-
 Wednesday... 14 } tions, Causes, and Fur-
 Thursday 15 } ther Directions.
 Friday 16 }
 Saturday 17 }
 Monday 19 }
 Tuesday 20 }

Wednesday.... 21 The Third Seal—Motions.

Thursday..... 22 }
 Friday 23 }
 Saturday 24 }
 Monday 26 }
 Tuesday 27 } Pleas, Demurrers, Excep-
 Wednesday... 28 } tions, Causes, and Fur-
 Thursday 29 } ther Directions.
 Friday 30 }
 Saturday 31 }
 Monday August 2 }
 Tuesday 3 }

Wednesday.... 4 { The Fourth Seal—Mo-
 tions.

Thursday..... 5 Petitions.

The Court will not sit after Tuesday the 10th of August.

His Honor the Vice Chancellor will hear Unopposed Petitions and Short Causes previous to the General Paper every Friday during the Sitting.

From the end of Term till the First Seal the Vice Chancellor will sit at Lincoln's Inn to hear Motions and other matters.

Before the Master of the Rolls.

AT THE ROLLS.

Monday.. June 21 { Pleas, Demurrers, Causes,
 Tuesday 22 } Further Directions, and
 Exceptions.

Wednesday... 23 Motions.

Thursday..... 24 }
 Friday 25 }
 Saturday 26 }
 Monday 28 }
 Tuesday 29 } Pleas, Demurrers, Causes,
 Wednesday... 30 } Further Directions, and
 Thursday.. July 1 } Exceptions.
 Friday 2 }
 Saturday 3 }
 Monday 5 }
 Tuesday 6 }

Wednesday.... 7 Motions.

Thursday..... 8 Petitions in Genl Paper.

Friday 9 }
 Saturday 10 }
 Monday 12 }
 Tuesday 13 } Pleas, Demurrers, Causes,
 Wednesday... 14 } Further Directions, and
 Thursday 15 } Exceptions.
 Friday 16 }
 Saturday 17 }
 Monday 19 }
 Tuesday 20 }

Wednesday....	21	Motions.
Thursday.....	22	
Friday.....	23	
Saturday.....	24	
Monday.....	26	
Tuesday.....	27	Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Wednesday....	28	
Thursday.....	29	
Friday.....	30	
Saturday.....	31	
Monday August 2		
Tuesday.....	3	

Wednesday....	4	Motions.
Thursday.....	5	Petitions in Genl Paper.

Short Causes, Consent Causes, and Consent Petitions, every Tuesday at the Sitting of the Court.

Court of Exchequer.

*Sittings in Equity, after Trinity Term, 1841,
at Serjeant's Inn Hall,*

BEFORE MR. BARON ALDERSON.

Monday..June 28	Petitions and Motions.
Tuesday.....29	Further Directions and Exceptions to Reports; Pleas, Demurrers, and Exceptions to Answers.
Wednesday....30	
Thursday..July 1	Ditto.
Friday.....2	<i>Ricketts v. Loftus</i> (by Order).
Saturday.....3	
Monday.....5	Same, and other Causes.
Tuesday.....6	Petitions and Motions.

LAW BILLS IN PARLIAMENT.

House of Lords.

Bills passed.

Administration of Justice in Chancery.
Usury on Bills.
Tithes Recovery.
Sewers.

Small Debt Courts for

Blackburn.	East Redford.
King's Norton.	Launceston.
St. Helens.	Salisbury.
Sleaford.	Totness.

Bills postponed.

Charitable Trusts.

Principal and Factor.
Petty Sessions.
Double Costs, &c.

House of Commons.

Bills passed.

Election Petitions Trial.
Bribery at Elections.
Highway Rates.
Gainsboro' Small Debts Court.

Postponed.

Abolition of Church Rates.
Poor Laws Amendment.
Evidence.
Offences against the Person.
Mandamus.

THE EDITOR'S LETTER BOX.

Our Professional Brethren and their Assistants in the approaching Election will be glad to find that Mr. Rouse has published a *Manual for Election Agents, Candidates and others*, in the formation of Registration and Election Committees, the arrangement of the Duties of each Member, the preparing for Cases at Revision, and the Canvass and Poll at Elections.

As the important Act for the Commutation of Manorial Rights and the Enfranchisement of Copyholds, comes into operation on receiving the Royal Assent, we have thought it right to put our readers in immediate possession of it, in a cheap and accessible form. The Royal Assent will probably be given this day, or on Monday; and our readers may rely upon the present print being a *verbatim* copy of the Act.

The communications of S.; "Durante Vita;" and Q. X. shall be attended to.

The List of Professional Appointments will be inserted in the Monthly Record.

The decision of the Court of Exchequer Chamber, pronounced by Lord Chief Justice Tindal, on the Braintree Church-rate Case of *Burder v. Veley*, is, we presume, well known to our readers, but we will look to the report.

The letters of "Fair Play;" W. S. S.; "A Country Subscriber;" J. R. B.; and G. H. V. have been received.

The Legal Observer.

SATURDAY, JUNE 26, 1841.

— "Quod magis ad Nos
Pertinet, et nescire malum est, agitamus.

HORAT.

PARLIAMENTARY NOTICES.

DISSOLUTION OF PARLIAMENT.

The first parliament of Queen Victoria is dissolved, and another is about to be summoned. As on former occasions, we shall give a list of the various legal candidates, and we have only to repeat our wish that they may *all* be successful. We include in this list, the names of some gentlemen not, we believe, in actual practice, but more or less connected with the law.

Aglionby, H. A. . . .	Cockermouth.
Buller, Charles . . .	Liskeard.
Cresswell, C. . . .	Liverpool.
Crowther, W. . . .	Winchester
Darby, George	East Sussex.
Dundas, David	Sutherlandshire.
Follett, Sir William .	Exeter.
Freshfield, J. W. . . .	High Wycombe.
Grainger, T. C. . . .	Durham.
Godson, Richard . . .	Kidderminster.
Goulburn, Serjt. . . .	Carlisle.
Grey, Sir George . . .	Devonport.
Hayter, W. G. . . .	Wells.
Jervia, John	Chester.
Kelly, Fitzroy	Ipswich.
Law, C. E.	Cambridge Univ.
Lynch, A. H.	Galway (town).
Maclean, D.	Oxford (city).
Parker, John	Sheffield.
Pemberton, T.	Ripon.
Philpotts, J.	Gloucester.
Pollock, Sir F.	Huntingdon.
Richards, Richard . .	Merionethshire.
Roebuck, T. A.	Bath.
Scarlett, Hon. R. C. . .	Horsham.
Sugden, Rt. Hon. Sir E. B.	Ripon.
Villiers, C. P.	Wolverhampton.
Watson, W. H.	Kinsale.

Wigram, James Leominster.
Wilde, Sir T. (A. G.) . Worcester.

On this list we have only to remark that there are very few new legal candidates, and we regret to find that some of the legal members in the last parliament have retired from parliamentary life, not, however, as we trust, for ever. We forbear to mention any names, as their intention of retiring is not known in any authentic shape.

PUBLIC BILLS.

A RETURN has just been printed of all the public bills which have been brought into the House of Commons during the last and present sessions of parliament, and which have been postponed: also a return of those bills which have passed the House of Commons, and afterwards passed into law; and it appears that in the Session 1840 fifty-two bills were brought in and postponed, and ninety-six passed into a law. In the present Session seventy-three public bills have been introduced into the House of Commons, none of which have yet passed, and twenty have passed into law. Of the seventy-three we should doubt whether more than ten have passed into law. There is certainly, therefore, an unreasonable proportion of bills which are introduced and get on one or two steps, and are either thrown out, or, as is the more usual case, are abandoned by their introducers. This is undoubtedly the state of the case, but we do not see how it can safely be remedied. Every facility should be given to legislation. By the usual courtesy of the House of Commons, any member is allowed to introduce and print his bill. In the House of Lords a peer has a right to do this without previously obtaining leave. We think the members of the Lower House should have

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the same privilege. There are certainly some very silly bills introduced, but they effectually expose themselves, and do no harm, except to their inventors. Other bills there are which afford a ground-work or hints for maturer legislation. It might on some accounts be well if a bill passed through some ordeal by some appointed officer of the House, whenever leave was given to bring it in: but even here there would be considerable difficulty. How could such an officer afford adequate attention to bills at the commencement of the session, when many are introduced? How could a bill be introduced on the sudden, which is often necessary. Besides, if such an officer were appointed, the responsibility of the bill would be thrown on him, and not, as at present, on the member who introduces it. There are even grave doubts however, in a constitutional point of view. The most important power and trust might thus be reposed in a party not recognised in any way by the constitution. Altogether, we are inclined to leave things as they are, except that it might be well to try and adopt some uniformity of language, and to have some officer to explain to country gentlemen what their real meaning is (which they do not always thoroughly understand); further than this we think an officer to draw public bills would interfere with the valuable and necessary privileges of a discussion in committee, often the most useful stage in a bill, and would do more harm than good. Not so, however, in private bills. We fear but little progress has been made in the session just closed in these projected alterations, to which we have repeatedly alluded, for putting this branch of legislation on a better footing; but we shall return again to this subject on receiving the Report of the Committee on Private Business, which we may shortly expect.

CUSTODY OF INFANTS.

Our readers will remember that we took a considerable interest when the 3 & 4 Vict. c. 90 (the custody of Infants Act) was before parliament, in opposing it. It afterwards passed in a modified shape. The evils which it would in our opinion have introduced, have, however, been happily averted by the measure having in fact been inoperative. A return has been moved for "of any infants who, in pursuance of act 3 & 4 Vict. c. 90, may have been assigned by the High Court of Chancery to the care and custody of any person or persons, spe-

cifying the name and age of such infants, the name or names of the person or persons to whom such infants may have been assigned; whether with or without the consent of the parents or guardians; and whether any and what regulations as to the maintenance, education, and care of such infants, may have been prescribed by the High Court of Chancery," the answer to which is *nil*. This act, therefore, at present remains a dead letter.

THE COPYHOLD COMMISSION.

In our last number we printed the Copyhold Enfranchisement Act, having been enabled to lay it before our readers in a complete and correct form before it got into general circulation through the usual channels. It received the Royal Assent on Monday, and is 4 & 5 Vict. c. 35. The Copyhold Commissioners, who are to carry the act into operation, as our readers are already aware, are, the Tithe Commissioners, Mr. Blamire, Capt. Buller, and the Rev. Richard Jones; and from the able and judicious manner in which they have performed their duties under the Tithe Commission, the country has just reason to be pleased with their appointment. Mr. James Stewart is the Secretary of the Commission.

CHANGES IN THE LAW,

IN THE LAST SESSION OF PARLIAMENT.

No. VII.

COSTS IN FRIVOLOUS SUITS.

4 & 5 Vict. c. 28.

An Act to prevent Plaintiffs in certain frivolous Actions from obtaining their full Costs of Suit.

[21st June, 1811.]

1. 3 & 4 Vict. c. 24: repeal of 3 & 4 Vict. c. 24, as to actions wherein verdicts had been returned before it passed.—Whereas by an act passed in the last session of parliament, intituled "An act to repeal part of an act of the forty-third year of the reign of Queen Elizabeth, intituled, an act to avoid trifling and frivolous suits in law in her Majesty's Courts in Westminster," and of an act of the twenty-second and twenty-third years of the reign of King Charles the Second, intituled, "an act for laying Impositions on Proceedings at Law;" and to make further provisions in lieu thereof, the said act of the forty-third of Elizabeth, so far as it relates to costs in actions of trespass or trespass on the case, and so much of the said act of the twenty-second and twenty-third of Charles the Second as relates to costs in

personal actions, was repealed: And whereas it is expedient to remove all doubt whether plaintiffs in actions which had been commenced, and wherein verdicts had been returned before the passing of the said act of the last session for less damages than forty shillings, may not still be entitled to their full costs of suit, contrary to the manifest intention of the same; be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That the said act of the last session shall be and is hereby repealed, so far as the same repeals or may be deemed to repeal the said statute of the forty-third of Elizabeth or the said statute of the twenty-second and twenty-third of Charles the Second, in respect to actions wherein verdicts had been returned before the passing of the said act of the last session.

2. *Plaintiff's costs in case of a verdict for less than 40s.*—And be it enacted, and it is hereby enacted and declared, that no plaintiff who had before the passing of the said act of last session obtained a verdict for a less amount of damages than forty shillings shall now be entitled to full costs, unless he was so entitled immediately before the passing of the said act of last session: Provided nevertheless, that if any such plaintiff shall have proceeded, since the passing of the said last mentioned act, and before the third day of May one thousand eight hundred and forty one, to tax his full costs on any such verdict so obtained for less than forty shillings, nothing in this act contained shall deprive such plaintiff of any remedy thereon which he may now have for the recovery thereof; but it shall be lawful for such court or judge, on the application of any defendant in such action, to stay all the proceedings on such application, upon payment of such costs as such court or judge shall think fit.

THE PROPERTY LAWYER.

RULE IN SHELLEY'S CASE.

In *Venables v. Morris*, 7 T. R. 342, it is said by Lord Kenyon, C. J., "an estate was limited to S. Morris for life, and after several intermediate limitations, an estate was limited to his heirs for ever; and whether the last be a legal or an equitable estate makes no other difference than this, that in the one case the heir will take as a purchaser, in the other by descent; but *quacunqve via data* the defendant is entitled in this case. For, if the limitation to the heir of S. Morris be a legal estate, it enlarged the estate in the ancestor, and gave him the legal fee; if it be an equitable remainder, to which the prior legal estate in the ancestor could not be limited, it was a contingent remainder to the heir, and the heir takes as a purchaser." In conformity with this lan-

guage, the certificate, subsequently sent to the Lord Chancellor, see 7 T. R. 438, and Fearne's C. R. by Butler (9th edit.) 19 n., decided that the remainder in question did not unite with the life estate of S. Morris, because the former was an equitable, and the latter a legal estate. The same point has recently arisen, and the following decision was come to respecting it. Lord Denman, C. J., said, "We granted this rule on account of the dictum in *Venables v. Morris*, in order that the point might be discussed. If we had taken time for consideration, we should have seen that the point was altogether free from doubt and have refused the rule. It appears from Mr. Fearne's learned work, pp. 28—37, that where a person, by the same conveyance, takes a particular estate, and a mediate remainder in fee or in tail, the subsequent estate limited to him is to take effect as a remainder after the determination of the interposed estate; and this in cases where the rule in Shelley's case certainly applies. Assuming, therefore, the rule in Shelley's case to apply here, (which I think is not the correct view,) the act of the tenant in tail in remainder could not bar the antecedent life estates. The language of Lord Kenyon in *Venables v. Morris*, was not necessary to the decision. This rule must be discharged. *Putteson, J.*—I have no doubt on this subject. The passages referred to in Fearne, make it quite clear. After combating the notion (p. 33.) that the possibility of the freehold's determining in the life of the ancestor who takes it, makes the subsequent limitation to his heirs contingent, and prevents it from attaching in himself, he says that such subsequent limitation, whether it is mediate or immediate, always rests immediately in the ancestor, "with this distinction, that, where such subsequent limitation is immediate, it then becomes executed in the ancestor, forming, by its union with his particular freehold, one estate of inheritance in possession; but, where such limitation is mediate, it is then a remainder vested in the ancestor who takes the freehold, not to be executed in possession till the termination of the preceding mesne estates." The subsequent limitation then in this case is a remainder—a remainder on what?—On the intermediate estates for life. Then follows the passage, p. 37, in which Mr. Fearne says that if the interposed estates are contingent, then, although the two mediate estates in the ancestor shall coalesce, nevertheless, when the contingency happens, and the interposed estate comes into existence, the estates which have so coalesced shall open and let it in. If such estates are to reopen for the purpose of letting in an interposed estate which was contingent in the first instance, it can hardly be held that they are to keep closed, so as to shut out that which was a vested remainder in the first instance. *Smith v. Clifford* is in favour of the plaintiffs. In *Venables v. Morris*, the person claiming was heir, and there does not appear to have been any question as to the estate of any intermediate remainder-man. Rule discharged. *Doe d. Nicholson v. Welford*, 4 R. and D. 77.

VOIDABLE MARRIAGES, AND PROHIBITED DEGREES OF AFFINITY.

WE shall take an early opportunity of considering the proposed alteration of the law with respect to voidable marriages, and the prohibited degrees of affinity. For the present we give the bill recently brought in by Lord Wharncliffe.

It is intitled "An Act to amend an Act to render certain marriages valid, and to alter the law with respect to certain voidable marriages, and to define the prohibited Degrees of Affinity."

1. 5 & 6 W. 4, c. 54. *All marriages within any degree of affinity declared valid, except, &c.*—Whereas by an act passed in the fifth and sixth years of the reign of his late Majesty King William the Fourth, intitled "An Act to render certain marriages valid, and to alter the law with respect to certain voidable marriages, it was enacted, that all marriages which should have been celebrated before the passing of the said act between persons being within the prohibited degrees of affinity should not thereafter be annulled for that cause by any sentence of the Ecclesiastical Court, unless pronounced in a suit which should be depending at the time of the passing of the said act; and it was by the said recited act provided that nothing therein-before enacted should affect marriages between persons being within the prohibited degrees of consanguinity; and it was by the said act also enacted, that all marriages which should thereafter be celebrated between persons within the prohibited degrees of consanguinity or affinity should be absolutely null and void to all intents and purposes whatsoever: and whereas numerous marriages have been celebrated since the passing of the said recited act between persons within certain degrees of affinity, under a sincere conviction that such marriages are not forbidden by the Divine law: and whereas it is expedient to alter and amend the said recited act in certain respects, and to define the cases which are within the prohibited degrees of affinity; be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal and commons, in this present parliament assembled, and by the authority of the same, that all marriages which have been celebrated, or which shall hereafter be celebrated, between persons being within any degrees of affinity, other than and except such as are specifically mentioned in the table set forth in the schedule to this act annexed, shall be deemed lawful and valid marriages from the beginning to all intents and purposes: provided always, that nothing in this act contained shall affect marriages which have heretofore been annulled or declared void by legal decision, or mar-

riages between persons within the prohibited degrees of consanguinity.

1. *Marriages of persons within prohibited degrees or comprised in schedule to be void.*—And whereas doubts have arisen whether marriages which have been celebrated between persons being within the prohibited degrees since the passing of the said recited act in countries wherein such marriages are permitted by law are liable to be annulled by any sentence of the Ecclesiastical Courts in England; be it therefore enacted, that all marriages which have been celebrated since the passing of the said act or which shall hereafter be celebrated in any country whatsoever between persons within the prohibited degrees of consanguinity, or comprised in the schedule hereunto annexed, shall be absolutely void to all intents and purposes whatsoever: Provided always, that nothing herein contained shall be construed to extend to that part of Great Britain called Scotland.

3. *Act may be altered, &c.*—And be it enacted, that this act may be altered or repealed by any act or acts to be passed in this present session of parliament.

SCHEDULE.

MARRIAGE BETWEEN A MAN and

1. His grandfather's widow.
2. Wife's grandmother.
3. Stepmother.
4. Wife's mother.
5. Wife's daughter.
6. Son's widow.
7. Son's son's widow.
8. Daughter's son's widow.
9. Wife's son's daughter.
10. Wife's daughter's daughter.

MARRIAGE BETWEEN A WOMAN and

1. Her grandmother's husband.
2. Husband's grandfather.
3. Stepfather.
4. Husband's father.
5. Husband's son.
6. Daughter's husband.
7. Son's daughter's husband.
8. Daughter's daughter's husband.
9. Husband's son's son.
10. Husband's daughter's son.

ADVERSE POSSESSION.

ALTHOUGH the 3 & 4 W. 4, c. 27, s. 2, has been now more than ten years in operation, and from the language of that section it must be tolerably clear that the doctrine of adverse possession must, since that statute passed, be generally exploded, and some decisions to that effect have been pronounced, the observations frequently heard in Courts seem to imply that the effect of the statute is still not generally understood by the profession. We, therefore, presume that an article pointing out first, the

state of the law as it stood previous to the statute in question; secondly, the provisions of the statute; and thirdly, the principal decisions on it, may not be unacceptable.

First, then, as to the previous state of the law, we propose to consider it under the following heads:—

1. As between the claimant and a party who has expressly acknowledged his title.

2. As between parties whose titles are consistent.

3. As between landlord and tenant.

4. As between mortgagors and mortgagees.

5. As between trustee and *cestui que trust*.

6. As between tenants in common, joint-tenants and coparceners.

1. *As between the claimant and a party who has expressly acknowledged his title.*—The doctrine of adverse possession did not operate where a party seeking to avail himself of it, acknowledged his adversary's title, as where *J. S.*, a lord of a manor, demised lands to the rector of the parish of *D.* for forty years, at a certain rent; and, in the lease, the rector, after covenanting for payment of the rent, further granted to *J. S.*, the lord, the tithe of oats of the parish; the lease also contained a proviso for re-entry, in case the rent should be in arrear, or *J. S.*, his heirs, &c. should be disturbed by the rector, or his assigns, in the receipt of the tithes: and concluded with a covenant on the part of *J. S.*, that the rector should quietly enjoy the lands under the covenants, grants, and agreements contained in the lease. After the expiration of the lease, the rector, for the time being, continued to hold the land, but withheld the rent for more than twenty years; the heirs of *J. S.* at the same time continuing to take the tithe of oats, and some confusion existing as to the respective rights of the rector and the heirs of *J. S.*, the latter being portionists of the tithes of the parish; it was held that the possession of the land by the rector was not adverse, so as to let in the operation of the Statute of Limitations. (*Doe d. Pellat v. Ferrars*, 2 B. & P. 542.)

2. *As between parties whose titles are consistent.*—Where the title of the parties is consistent, the possession cannot be deemed adverse. Thus *A.* being seised in fee of an undivided moiety of an estate, devised the same (by will, made some years before her death) to her nephew and two nieces, as tenants in common. One of the nieces died in the lifetime of *A.*, and left an infant daughter. *A.*, by another will, intended to have devised the moiety to the nephew and surviving niece, and the infant daughter of the deceased niece, but the will was never executed. After *A.*'s death, the nephew and surviving niece covenanted to carry the unexecuted will into execution, and to convey one-third of the moiety to trustees, upon trust to convey the same to the infant if she attained twenty-one years, or to her issue if she died under twenty-one and left issue, or otherwise to the nephew and niece in equal moieties. No conveyance was ever executed in pursuance of the deed. The rents of the third were received by the trustees for the use

of the infant during her lifetime. An ejectment having been brought by the devisee of the nephew more than twenty-one years after his death, but less than twenty-one years after the death of the infant; it was held, that there was no adverse possession until the death of the infant, and that the ejectment was well brought. (*Doe d. Colclough v. Hulse*, 3 B. & C. 757.)

A party having good title to the possession as tenant by the curtesy, his possession of the copyhold after his wife's death will be referred to that, and not to any adverse title, though he were admitted after his wife's death to hold to him pursuant to the settlement, by which the estate of the wife was limited to the survivor in fee, so as to let in the title of the heir at law of the wife in ejectment brought within twenty years after the husband's death. *Doe d. Milner v. Brightwen*, 10 East, 583

3. *As between landlord and tenant.*—Prior to the passing of 3 & 4 W. 4, c. 27, s. 3, the mere nonpayment of rent was not alone sufficient to render possession of the tenant adverse to that of his landlord.

The mere receipt of rent by a stranger without colour of title, was not evidence of adverse possession against one who had the legal title; for it was no disseisin, but at the option of the latter, even although the stranger made a lease by indenture reserving rent, unless he made an actual entry. (*Bull. N. P.* 104; 1 Roll. Abr. 659; and see *Smith v. Parkhurst*, Andr. 324; *Jayne v. Price*, 5 Taunt. 326; 1 Marsh. 68.) If there be a tenant at sufferance, and a stranger not having any right to the land make a lease to him by indenture, rendering rent, without putting the tenant by sufferance out of possession, and the tenant pay the rent to the stranger—that is not any disseisin to him who has the right. (1 Roll. Abr. 659, (c.) pl. 11.) So, if a tenant at will make a lease for years, and the lessee entered, though the estate at will did not warrant the lease, it was only a disseisin at election. (*Blunden v. Baugh*, Cro. Car. 302.) For where a person gains a possession under a title, consistent with that of the person having right, it is but a disseisin at election. (See 2 Sch. & Lef. 622; 1 Taunt. 599.)

When there was a valid lease subsisting, the right of entry was preserved until the determination of the lease, although no rent had been received. (*Correll v. Maddox*, Ruin. Eject. App., No. 1); and even the adverse receipt of rent for more than twenty years did not deprive the party of his right of entry on the determination of the lease. (*Doe d. Danvers*, 7 East, 299); although a void lease, or a term which had become attendant upon the inheritance for the benefit of the owner of it, did not prevent the running of the statute of limitations. (*Taylor v. Horde*, 1 Burr. 60.) But where an estate had been in lease, and *A.* entered and received the rent during the continuance of the lease, and remained in possession more than twenty years from the time of his entry, and another person claiming the estate within twenty years after the expiration of the lease,

brought an ejectment and filed a bill for a discovery, it was held, that the possession was adverse, as a bill might have been filed by the parties claiming during the whole time the leases were in existence; and a demurrer to the discovery was allowed, and assistance in equity refused. (*Cholmondely v. Clinton*, Turn. & Russ. 107; *Shelford's Real Property Acts*).

4. *As between mortgagor and mortgagee.*—Formerly twenty years' possession by a mortgagor did not bar the mortgagee as adverse. Thus, in *Hall v. Doe d. Surtees* (5 B. & A. 687) where premises were mortgaged in fee, with a proviso for a reconveyance if the principal were not paid on a given day; and in the mean time that the mortgagor should continue in possession; upon special verdict it was found that the principal was not paid on the given day, but that the mortgagor continued in possession; there was no finding by the jury, either that interest had or had not been paid by the mortgagor.—Held, that upon this finding it must be taken, that the occupation was by the permission of the mortgagee, and consequently, that although more than twenty years had elapsed since default in payment of the money, still the mortgagee was not barred by the statute of limitations. (See 2 Jac. & W. 188; 6 Mad. 181; S. C. 1 V. & B. 536; and *Doe v. Barton*, 3 P. & D. 194).

5. *As between trustee and cestui que trust.*—If the *cestui que trust* has not denied the title of the trustee, his possession as against the trustee cannot be considered as adverse. Thus, in the case of *Keene v. Deardon*, 8 East, 243, it was held, that the possession and receipt of the rent, issues, and profits of a trust estate by a *cestui que trust*, for more than twenty years after the creation of the trust, without any interference of the trustees, such possession being consistent with and secured to the *cestui que trust* by the terms of the trust deed, is not adverse to the title of the trustees, so as to bar their ejectment against the grantees of the *cestui que trusts*, brought after the twenty-one years. But this rule applies only as between *cestui que trusts* and trustee; and not between *cestui que trust* and trustee on one side, and strangers on the other; for that would be to make the statute of no force at all; because there is hardly an estate of consequence without such a trust; and so the act could never take effect. Therefore, where a *cestui que trust* and his trustee are both out of possession for the time limited, the party in possession has a good bar against both. (*Llewellyn v. Mackworth*, Barnard, C. P. 445; 15 Vin. Ab. 125, n. to pl. 1.)

6. *As between tenants in common, joint-tenants and coparceners.*—Between strangers and one of several joint-tenants, &c., the continuance of seisin in one joint-tenant or tenant in common, or coparcener, was a continuance of the seisin in all, so as to prevent the operation of the statutes of limitation, (6 Mod. Rep. 44). Therefore, before the possession of one joint-tenant, &c., could be adverse, so as to

enable him to maintain an ejectment, he must have done some act amounting to a denial of the right of such co-tenant, or omit some duty from which a jury would infer such denial, before his possession could be adverse and within these statutes. Lord Mansfield said, "If upon demand by the co-tenant of his moiety, the other denies to pay, and denies his title, saying he claims the whole, and will not pay, and continues in possession, such possession is adverse and ouster enough." (1 Cowp. Rep. 218). And in *Doe d. Helling v. Bird*, 11 East, 49, it was held, "that the one tenant in common, claiming the whole and denying possession to the other, was certainly evidence of an ouster of his companion, and that this was beyond the mere fact of receiving the whole rent, which was an equivocal act."

We shall, in an early number, proceed to shew wherein the law is altered by the recent statute.

THE LAW OF LIBEL.

WE have already called our readers' attention to the remarks of the Criminal Law Commissioners, on the law of High Treason. We shall now abridge their statement of the Law of Libel; and we need hardly say that, considering the names of the gentlemen who sign the Report, Mr. Starkie, Mr. Ker, Mr. Jardine, any statement of the law on this subject from them, must be highly valuable.

"*Political Libels.*—The security of a state may be endangered not only by direct and immediate attempts to subvert it, but also by bringing its establishment, civil and religious, or its ministers and officers, into disgrace and contempt.

"Malevolent attempts to bring the constitution, or the character and conduct of those by whom it is administered, into public odium and contempt, tend to public injury, because they tend to impair the constitution by diminishing the vigour which is necessary for carrying it into effect. Such attempts are also injurious in their direct tendency to breed discontent, and to promote violent, sudden, and ill-advised changes. This class of injuries comprises not only publications tending to render the constitution and its laws odious or ridiculous, but also such as are inconsistent with the reverence and respect due to the person of the sovereign, and also such as are calculated to bring either house of Parliament, the administration of justice, and other branches of the executive power, into public hatred and contempt. Offences of the latter description are nearly connected with some others to which we have already adverted in our fifth report; that is, to such as consist in obstructions of the executive authority. For all such attempts to render the executive power odious or contemptible tend to encourage a spirit of resistance to its authority, and so to impair its efficacy. Publications,

consisting of speeches made to numbers, and which are injurious to the public peace, as encouraging a multitude of persons to acts of violence and outrage, may amount to overt acts of treason: in other cases they are properly classed and made cognizable either as constituting a seditious offence, or as evidencing an unlawful assembly. Where the communication amounts to an unlawful solicitation to do any act contrary to the duty or allegiance of the subject, or inconsistent with public peace, it is usually made penal by some specific enactment.

"The interests of the public may also be affected and prejudiced by publications reflecting on the conduct or characters of foreign potentates; for by such means enmity and discord may be occasioned between the two nations.*

"Personal libels.—Communications prejudicial to the characters of private persons may be regarded, first, as injurious to the individual; secondly, to the public. To the individual, as depriving him of that good name on which his advancement and prosperity so frequently depend, and as excluding him from that commerce with society, the enjoyment of which is one of the main objects of social union. To the public, because no other private injury so directly and forcibly tends to disturb the public peace by provoking injured parties, or their friends or adherents, to retaliate by acts of personal violence; and, also, because by the unjust aspersion of the characters of meritorious individuals the public may thereby be deprived of their services.

"As laws without moral aid constitute a very insufficient and inadequate restraint upon conduct, it cannot but be matter of public concern amply to protect that love of reputation which supplies one of the most powerful and salutary of those motives by which mankind are influenced and preserved from evil.

"Libels on personal character admit of distinctions, the considerations of which is not unimportant. Such a libel may charge the commission of some illegal act, or may impute some habit or disposition which involves the charge of corresponding acts, although none are specified, and such acts may either constitute offences in respect of which the agents are liable to punishment, or offences against religion or morals; or the libel may merely impute some evil disposition or inclination of an illegal or immoral nature, without implying any act; or may alledge propensities, acts, or circumstances which, although not either illegal or immoral, are such that the allegation, if believed, would tend to render its object either contemptible or ridiculous.

"Libels against religion or morality.—As mere positive laws are of little avail, without the powerful aid of religion and morality, it is of great importance to the well being of society that its interests should be protected against

the pernicious influence of communications tending generally to extinguish men's religious faith, and to eradicate from their minds the principles of morality.

"For although the operation of human laws, which ought to be definite and precise, and which command not but where they can compel, must necessarily be far less extensive than the obligations of morality; and although by far the greater part of the ordinary duties of a member of society fall not within the scope of any mere prohibitory law, but must be left to every man's sense of propriety and his conscience, and to a salutary dread of public censure, yet positive laws may restrain generally such communications as tend to instil bad principles, or extirpate good ones. To restrain such offences is the more necessary, when it is considered that for the performance of most of the common duties of life, undefined by positive law, and for the preservation of decency and good order, religious and moral principles and the dread of public censure, are the only securities.

"Such considerations become infinitely more strong and important, when they are considered in reference to the facility of communication, supplied by the art of printing, especially where its operation is still further extended by general education, which, in effect, subjects to its power the great mass of the public.

"The press is, indeed, a mighty instrument for the diffusion of knowledge, capable of being applied to the best, or perverted to the worst of purposes; eminently useful in promoting the interests of religion, morality, science, and social happiness, it may be abused as the instrument of impiety, vice, error, and malice. When, therefore, it is considered how much, not merely the opinions, but the feelings and passions of the public, are capable of being influenced and excited by means of this powerful agent, how few there are who think for themselves, and who are not (it may be insensibly) guided and moved by the opinions of others, how great a dominion may be exercised by one strong mind over the minds of millions, how prone the generality of mankind are to the reception of the most calumnious charges, how credulous in listening to the most improbable misrepresentations, and how greatly every calumny, directed against an individual, is aggravated by increased publicity; when these things are considered, it will readily appear, of what supreme importance it must be in every system of municipal law, on the one hand to protect the liberty of communication, and on the other to exclude the complicated and frightful mischiefs which are likely to emanate from a corrupt and licentious press.

"Freedom of intellectual communication and discussion ought to constitute the general rule, and any limitation of that right the exception. The abridgment of this right, requires the more anxious attention, when it is considered that any unwarranted or unnecessary restraint would be attended with peculiar inconvenience to society on account of its constant operation, and the danger and risk of exposing parties to

* See the trial of Peltier, for a libel on Bonaparte when First Consul of France.

vexatious prosecutions. The mischiefs which render penal restraint necessary, result from the abuse of the liberty of free communication,—on the other hand, splendid and incalculable advantages flow from the natural and proper use of that liberty to religion, morals, and science; the freedom of political discussion is absolutely inalienable from a free constitution, is one of its best supports, and one of the most effectual safeguards that can be devised for the protection of the state from seditious practices, on the one hand, or encroachments on the liberty of the subject, on the other. Whilst the reputation of an individual ought, as well as his person or property, to be protected from malicious injury, yet as a general proposition, it may be stated that it is highly essential to the interests of the community and the protection of the innocent, that the real characters of delinquents should be exposed.

"We now proceed to make some remarks on the nature of those limits which may be conveniently adopted in reference to this class of offences.

"*On the principles by which the limits are to be defined.*—Such limits must depend either, 1st. On the nature, quality, and consequences of the communication; 2ndly, The act of the party making it, and the means of communication used; 3rdly. On his motive in doing the act, either simply, or in reference to the occasion of doing the act, or the circumstances under which it was done.

"1. As to the nature, quality, and consequences of the communication. It is, in the first place, essential that the matter published should be in its own nature injurious, as tending to produce mischief to the public or to a private person, such as has already been described.

"But as the very object of coercion is the *prevention* of public mischief, it is by no means essential to an offence of this nature, that the criminal object of a noxious publication should have been actually accomplished, it is sufficient that the communication should directly and immediately *tend* to produce mischief to the public.

"And this for several reasons, 1st, Because actual proof of evil consequences to the public would, from the very nature of the case, be frequently impossible, though highly presumable; and 2ndly, Because where great mischief is to be apprehended, it is far more politic to interfere at an early stage, and to arrest the progress of the evil, than to wait for its consummation: and 3rdly, Because as far as regards the moral guilt of the offender, his offence is completed by the very act of publication.

"Hence, so far as the evil consequences of a publication are concerned, it is necessary that the offence against the public should be defined and limited, not by the *effect* actually produced, but by the *tendency* of the matter published to produce it. If an individual, with a view to his own private gain, were to publish an address, inciting a discontented populace to burn all stacks of corn within a particular district, the law of the country would be absurd

and contemptible, which provided no punishment for so daring an outrage until proof could be given that some incendiary had on such recommendation destroyed his neighbour's property. The very attempt to excite others to the commission of such outrages, is in itself a dangerous violation of the principles of morality and natural justice:—on the question whether the attempt ought to meet with immediate reprobation and punishment, no conflict of opposite advantages and disadvantages could possibly occur—it would clearly be for the benefit of the community, that so atrocious an endeavour should be checked by penal visitation at the very earliest opportunity. And it is obvious, that it must not only be necessary, to restrain communications which tend directly to a breach of the law, by inciting others to the actual commission of crimes, but also those which tend to the subversion of religion, or, in general, to the destruction of the principles of virtue and morality, which are essential to good conduct, order, and decency.

"Again, it is plain, that the *degree* of tendency cannot be material, as a limit, to the offence, whatever its operation may be in adjusting the quantum of punishment. First, because any tendency to produce public mischief must, *pro tanto*, be injurious to society; and, secondly, because the extent to which the mischief may be tolerated, is not *capable* of any precise definition.

"Complaints have not unfrequently been made, that the law of libel in this country is too vague, and that neither the common nor the statute law sufficiently define what constitutes a libel.

"It may be of use to consider whether absolute and certain prohibitions are not excluded by the very nature of the subject matter; and whether, if such were imposed, they must not consist either in general or peremptory rules, which would encroach greatly on the freedom of communication, or in minute and specific ones, the particularity of which would subject them to the easiest evasions. The law may either totally prohibit all discussion on a particular and specific subject, or may go the length of tolerating all that can be said or written upon it; but there is scarcely any questions, either of general or individual interest, in respect of which total prohibition or entire toleration would not be prejudicial to the community. A total prohibition would, in most cases if not in all, be inconsistent with the great principle of civil liberty, for a penal restraint would be imposed to a greater extent than was necessary for the welfare of society; on the other hand, unrestrained license of communication would be liable to much abuse, and open the door to great mischief.

"Where it is beneficial to society that freedom of communication should be tolerated to a great extent, but where it would be highly inconvenient and mischievous to permit unbounded licence, to the abuse of that liberty, and, consequently, where a boundary is necessary, to the establishment and preservation of a proper limit must always be a work of nicety

and difficulty. It is, however, clear that the line of interdiction cannot be regulated by any prohibition of particular sentiments or language. Injurious modes of expression are far too variable to admit of any precise rules or regulations; the laws which descend to particulars on such subjects, and which forbid specific expressions otherwise than by way of example, are usually the work of early and inexperienced legislators, and cannot possibly be of any practical utility, subject, as they necessarily are, to the easiest evasions. Such offences, in truth, admit of no sufficient description, except in respect of the *effects* which they produce, or which they immediately *tend to produce*. Any attempt to enumerate, with a view to express and prohibit all the offensive means by which an ill-disposed person might attempt to destroy the public sense of modesty and decency, would be impracticable and absurd; if it be necessary that such practices should be restrained by the municipal law, it is, if not impossible, at least difficult, that the offence should otherwise be described than generally by a prohibition to publish that which, being immodest and indecent, directly tends to corrupt and vitiate the morals of the public. It may be objected, that any such general description is uncertain and indefinite. Admitting this to be so, no other inference seems to result than that human laws do not admit of perfection, and that no general definition can be framed which shall be applicable, with absolute certainty, to acts capable of infinite variety.

"Restraints against offensive communications, to be effectual must necessarily be very general, so as to exclude all possible modes of offence, and must therefore usually be commensurate with the injury to be prevented. This can only be done by framing the prohibition generally, according to the nature of that injury. The various modes by which a man may be rendered ridiculous and contemptible cannot be enumerated, but a general prohibition may include all publications tending to that result and designed for that purpose. Neither can any limitations be founded on the mere quantity or intensity of the mischief produced. A rule properly made for restraining publications, because they are likely to produce mischievous results, can no more be limited as to the extent of the evil than any other law can be which is designed to prevent any public or private injury. A law which overlooked small injuries to reputation, whilst it punished greater ones, would be as absurd, indefinite, and impracticable as a law which disregarded small injuries to person or property.*

[To be continued.]

* The difficulties of precise definition on the subject of libel are very clearly stated by Lord Brougham, in the evidence which he is understood to have given, when Lord Chancellor, before the Committee of the House of Commons, appointed in 1834, to consider the state of the law as regards libel and slander.

NOTICES OF NEW BOOKS.

A Manual for Election Agents, Candidates and others, in the formation of Registration and Election Committees, the arrangement of the duties of each member, the preparing for cases at Revision, and the Canvass and Poll at Elections. By Rolla Rouse, Esq.

THIS little book was much wanted, and is exceedingly well-timed and ably executed. There are several works on the *Law of Elections*, but none that we are aware of giving the *practical and useful information* contained in Mr. Rouse's Manual. Those parts of it are particularly valuable which guard against the confusion too often arising at the time of polling,—the inconvenience from the loss of check sheets, and the consequent delay and uncertainty in the state of the poll. By adopting the arrangements suggested by Mr. Rouse, the business of the poll may be easily carried on, and its state ascertained immediately, without fear of inaccuracy.

The arrangements recommended are equally available in counties and boroughs.

The work though small, and suited for the pocket, is very comprehensive. Under the department of *counties* it comprises:—

"1. Objects to be aimed at in any system for counties.—2. General requisites of the system.—3. The committees required.—4. The obtaining candidates—*The Registries*. 5. Inquiries as to parties entitled to claim.—6. Account of such parties.—7. Notices of claim.—8. Lists of claimants.—9. Inquiries as to grounds of objection, and notices.—10. Lists of objections.—11. Support of claimants.—12. Preparation for revision, and as to admissions by agents.—13. Notes of revision, &c.—14. Lists as revised to be made out, and also lists of voters not residing in the district.—15. Forwarding cross lists to other districts, &c.—16. Adding cross lists received from other districts, and as to votes to be tendered, changes by death, &c.—17. Alterations in list.—18. Map, canvassing route, estimate of time, &c.—*The Contest*. 19. The obtaining evidence of illegal practices by other party.—20. Printed address by the candidates.—21. Fixing time for their personal address to the voters in each polling town.—22. Distribution of printed addresses, &c.—23. The personal address at the polling towns.—24. The canvass, duties of district secretaries, &c.—25. Attendance by members of committee, and points in making the canvass.—26. Letters thanking for promises.—27. Circulars, naming time and place for polling.—28. As to doubtful voters.—29. Returns of results of canvass.—30. Provision for, and estimate of expenses by finance committee.—31. Arrangements for bringing up the voters to the poll, and as to London and other non resident voters.—32. Providing voters with cards, containing the

voting questions, &c.—33. Arrangements for communication between districts, &c. on polling days—34. Importance of previous arrangement for performance of each separate duty on the polling day, by a particular individual—35. Reference to subsequent instruction for such arrangement—36. Proceedings on close of first day's poll, and after close of election, &c.

“DUTIES OF THE RESPECTIVE COMMITTEES.

—37. General reference as to, 1st., *Central Committee*, s. 38 to 40; 2d. *Central Finance Committee*, s. 41; 3d. *Committee of Management*, s. 42 to 52; 4th. *District Committees and District Finance Committee*, s. 53 to 82; 5th. *London Committee*, s. 83; 38. *The Central Committee*.—Of whom to be composed—39. Duties of, as to candidates, formation of committees, canvass of non-resident voters, acting generally for one district—40. To prepare circulars, addresses, &c., and as to funds, &c.—41. *The Central Finance Committee*.—Its formation and duties—42. *The Committee of Management*.—Its formation—43. Duties; obtaining lists of secretaries of other committees, fixing meetings, and settling instructions to district committees, and sending same, lists, &c.—44. Periodical consideration of points likely to affect the registry—45. Drawing attention of district committees to duties, furnishing them with advice, &c.—46. Obtaining cross lists from each district, and forwarding same—47. Obtaining statement of number of addresses required; time and route for canvassing, and days of addressing voters in each district—48. Obtaining and forwarding requisitions, addresses, &c.—49. Attending to cross canvass and lists, &c.—50. Arrangements as to London voters—51. Obtaining results of canvass and lists, arrangements for conveying state of poll, &c.—52. Duties at election—*Instructions to district committees*, s. 53 to 81.—53. Formation of district committees—54. Proceedings on formation—55. Meetings and arrangements as to parishes and voters—56. Minutes of points likely to affect voters, and as to the time required for canvass, the canvassing route, &c.—57. Arrangements as to cross lists—58. Periodical result lists—59. Omitted cross returns, and as to claims to vote—60. Notices of claim—61. Inspecting lists of claims, and making objections—62. Inspecting lists of objections—63. Authorities from voters, claimants and objectors—64. Preparation for revision, and attendance at revision—65. Lists of voters, cross lists, and lists of votes to be tendered—66. Periodical revision of votes in register (67 to 81, *Business in contests*).—67. Signatures to requisitions, and delivery of printed addresses—68. Making out canvassing list and route—69. The canvass. 70. Letters thanking voters, and re-canvass and arrangements for conveyance to polling town—71. Return of canvass result to committee of management—72. Conveyance of voters to the poll—73. Arrangements for polling days.—74. As to inspectors, check clerks, and slip takers—75. As to doorkeepers, messengers, and answering members of committee—76. As to

committee room clerks, polling off and answering clerks—77. As to public committee room members, and conducting members—78. Sending off state of poll, and getting up unpollled voters—79. Final close of the poll—80. Settlement of accounts, letters of thanks, &c.—81. Written instructions to clerks, acting members of committee, &c.—*The district committees*—82. Outline of their duties, as particularized in instructions—*The London committee*—83. To canvass London voters, &c.

The directions relating to boroughs are thus specified:—

“84. The committees—85. As to occupation, rating, &c.—86. Payment of rates, &c.—87. Lists and claims—88. Objections—89. Time of serving notices—90. Lists of objections—91. Preparing for and attending revision—92. Register remarks, alphabetical references, &c.—93. Alphabetical and street lists for canvassing, &c.—[*The poll*, s. 94, to 129.]—94. Confusion, inconvenience from loss of check sheets, and delay in stating the poll at its close, to be obviated by arrangements to be pointed out—95. Persons to be employed, and capacities—96. As to check clerks and committee room clerks, expense, &c.—97. Duties of committee room clerks before polling day—98. Books, lists, &c. to be prepared—99. As to printing the forms—100. Arrangement of committee rooms before day of polling—101. Lists, instructions, &c. for inspectors of polls—102. The like for conducting members of committee, clerks, slip takers, door keepers, &c.—103. Arrangements at night before polling day—104. The like in morning before the poll opens—105. Mode in which the business will proceed during the poll—*Forms*. 106. No. 1. Alphabetical list of voters for private committee room—107. No. 2. A like list for public room—108. No. 3. Alphabetical lists for inspectors—109. No. 4. Alphabetical polling off list for public room—110. No. 5. Printed Registers—111. No. 6. Appropriation lists—112. No. 7. Booth lists—113. No. 8. Check sheet books for check clerks—114. No. 9. Lost check sheet papers or cards—115. No. 10. Voting cards—116. No. 11. State of the poll, sheets and cards—117. No. 12. Memorandum or communication book—118. No. 13. Polling off sheet for private committee room—119. No. 14. Notice for door of private committee room—120. No. 15. The like for public room—121 to 129. Instructions to inspectors, check clerks, slip takers, private committee room clerks, polling off clerks, answering clerks carriage department agent, answering members of committee, conducting members of committee—130. Registration notices and dates (*counties*)—131. The like (*boroughs*).”

THE
CHANCELLORSHIP OF IRELAND.

SIR John Campbell has been created a peer of the realm, by the title of Baron Campbell, and has since received the Great Seal of Ireland, on the resignation of Lord Plunkett. We sincerely congratulate the profession and the country, on an appointment which, in our opinion, is likely to be productive of benefit to both. Lord Campbell has qualities which peculiarly fit him to obtain the highest judicial success; extensive knowledge, a sound, clear, and discriminating judgment, a patient temper, and unwearyed industry; to say nothing of a spotless character in private life, and the respect and esteem of the profession, gained in the course of a long and laborious life, spent in rising from the lowest rank of the bar to the highest. Under these circumstances, we have seen with some concern, mixed with great surprise, that this appointment has met with some objections on the other side of the channel. Certainly, the sentiments of our Irish brethren are to be treated with great respect; but if they consider that they are entitled to set aside this, the fittest appointment that could be made on the Whig side, merely because the person appointed is not an Irishman, they have taken a ground, as we think, utterly untenable. Shew us an Irishman able to compete with Lord Campbell in any one of the points we have mentioned, and there may be some reason in the objection. Shew us an Irishman with any thing like the same qualifications, and we should yield the palm to him; but if there be no such person, we have only one choice, the fittest man is the most proper appointment, whether Englishman, Scotchman, or Irishman; and thus it is to the long roll of great English lawyers who have administered Equity in Ireland, we are anxious to add one inferior to none—Lord Campbell.

SELECTIONS
FROM CORRESPONDENCE.

PRACTICE.

THE learned Judges of the Court of Exchequer on the 24th of May, 1841, decided that if a plaintiff's attorney obtains a letter from a defendant, saying, "I am willing to engage to pay 1*l.* per month, the first payment to be made the 1st of July, allowing you to sign judgment for want of a plea, you writing me a letter stating that execution shall not issue unless I make default in my payments," and get a payment afterwards, it dispenses with a rule to plead—and this decision

in effect renders a *cognovit* unnecessary, and evades the late Act of Parliament as to attestations to *cognovits*—it also avoids the necessity of giving a term's notice of the plaintiff's intention to sign judgment.—The judges certainly did not say all this in so many words; but the facts of the case are these:—

An action of debt for 20*l.* 2*s.* 6*d.* was commenced—the declaration filed the 23rd May, 1839, but no rule to plead was given. On the 24th the letter from which the foregoing extract is made was written. Through the intervention of a third party 1*l.* was paid to the plaintiff on the 1st August, 1st September, and 1st November, 1839. Nothing more was paid till April, 1840, and then 3*l.* more was paid at irregular intervals,—no answer was ever received by the defendant from the plaintiff's attorney—no summons of any kind was taken out by the defendant; neither was any Judges' order made; no notice of intention to sign the judgment was given; nor any rule to plead ever entered. Yet the plaintiff signs judgment for want of a plea on the 19th February, 1841; the declaration being dated the 23rd May, 1839, which the judges decided he was justified in doing. F. G.

JOINT TENANTS.

In the case stated by X. Y. Z., p. 55, *ante*, the question turns upon the point, whether, trustees under a will, having power of sale and to give receipts, can delegate these powers to a third party. The general rule is that wherever a power is given, whether over real or personal estate, if the power repose a personal trust and confidence in the donee of it, to exercise his own judgment and discretion, he cannot refer the power to the execution of another, for *delegatus non potest delegare*. Thus where in *Coombes's case*, 9 Rep. 75 b., a power of sale was given to trustees, it was held they could not sell by attorney. And again, in a case where personal estate was given to such charitable uses as A. should appoint, and he directed the money to be applied as B. should appoint. Lord Hardwicke held the delegation void: therefore it seems clear that the trustees in this case, having a personal trust and confidence reposed in them, cannot delegate that trust to the surviving partner, and consequently his receipt would not be valid. J. B. A.

In answer to the first point raised by X. Y. Z. in your publication, it is a general rule, that where a trust is created implying a personal confidence, it cannot be delegated.

To the second: that, as the trustees instead of *renouncing* have *released*, there is an implied previous acceptance of the trust, which they will delegate at their peril; and as their receipt is alone declared sufficient, the purchaser cannot be advised, as appears quite clear (the trust property having been, in contemplation of law, in their custody) to dispense with it. *Crew v. Dickens*, 4 Ves. 97.

Z. Y. X.

SUPERIOR COURTS.

Lord Chancellor's Court.

SPECIFIC PERFORMANCE.—CONTRACT IMPROVIDENT AND CONTRARY TO CUSTOM.

Equity will not decree specific performance against a party who is not lawfully competent to perform the contract, nor against a party who has been induced, without professional advice, to enter into a contract which is contrary to the custom of the country, and without adequate consideration.

These two causes,—one upon bill to compel specific performance of an agreement for a lease of certain collieries in the county of Durham, and the other upon cross-bill to rescind the agreement—were argued during the sittings before Christmas. The subject-matter, and also the points made in the arguments, are sufficiently stated in the following judgment delivered by the Lord Chancellor on the 8th of May.

His Lordship said, "There are sufficient materials for deciding this case without going into the voluminous depositions referred to on each side. The contract first entered into on the 19th of January, 1835, contained a provision by which the plaintiff Ord was to take a lease of all the mines within a district, stated to be to the extent of 4000 acres, for thirty-one years, renewable at the option of the lessee every third, fifth, or tenth year, on payment of 1000*l.* upon each renewal; and the lessee was to have power to quit at the end of any one year, giving six months' notice, and he was also to have power to sub-let all or any part of the mines. With reference to the lessor, he was to prove his right to grant the lease; the rent was to be, the first two years 150*l.*; the second two years 400*l.*; the third two years 600*l.*; the last twenty-five years 1200*l.*, for an unlimited quantity of coal. Afterwards, upon the 29th of August, 1835, two memorandums were signed, the one by the plaintiff, the other by the defendant. That signed by the plaintiff was as follows:—"I do hereby undertake that the lease shall be drawn according to the agreement of the 19th of January, 1835, and the will of the Hon. Mary Lyon, and that Mr. Lyon shall retain all his rights as lord of the manor, as heretofore." That signed by the defendant was as follows:—"I do hereby undertake to execute a lease upon request, subject to its being engrossed in accordance with the agreement of the 19th January last, and with the leasing power of the mines and minerals, contained in my mother's will." These three documents constitute the contract between the parties, which is the first object of the plaintiff Ord's bill to have specifically performed. Many cases were referred to on behalf of the defendant for the purpose of showing that the Court could not compel a defendant specifically to perform a contract which he is not lawfully competent to perform,

as Lord Redesdale expresses himself in *Harnett v. Yielding*,^a and several cases were referred to on the part of the plaintiff to prove that in some cases where the vendor has agreed to do more than he can perform, the purchaser may have a decree for so much as he can attain. If my construction of the contract be right, neither of those questions arises. I consider the two memorandums of August 1835, as introducing an additional condition into the agreement of January 1835, that such agreement should be carried into effect only in the event, or upon the condition, of its being conformable to the will of the defendant's mother. The plaintiff undertakes that the lease shall be conformable to the will, and the defendant's undertaking is only to execute a lease which shall be in accordance with the leasing power contained in the will. The question then is, can the agreement of January 1835 be carried into effect in conformity with the provisions of the will? Under the will, the defendant is tenant for life, subject to a prior term of 1000 years, and he is empowered to grant leases of the mines for thirty-one years, so that "there be reserved upon every such lease the best and most yearly *tentale* or other rent or rents, that can be reasonably had or obtained for the same, without taking any sum or sums of money, or other thing, by way of fine, premium or foregift, for or in respect of any such lease." The defendant has established, that the most approved, and almost universal mode of letting collieries in this district, is to receive a part of the rent as fixed rent, and the other part in proportion to the coal gotten, which varies in amount, but always proceeds upon the same principle, "*tentale* or other rent." The object of this is obviously to secure the owner against the lessee taking any coal without an adequate payment; whereas, if there be a fixed rent, and the lessee takes more coal than the quantity upon which it is calculated, the owner is deprived of the excess without any consideration. What are the provisions of the lease? The quantity of coal to be taken is unlimited, and according to the plaintiff's construction, the power of underletting is without restriction. The rent, beginning at 150*l.*, is not to attain its maximum until the expiration of six years, and the lessee is to have the power of determining the lease on six months' notice. When there is a *tentale*, or other rent of that kind, there is no temptation to the lessee to get more coal than the quantity represented by the fixed rent, within any particular period, because he pays for what he gets by the *tentale* rent, whenever he gets it; but, according to the provision of the proposed lease, if he can get the whole, or the most valuable of the coal, within the early years of his lease, he would be enabled to determine the lease, stop all future rent, and the lessor and those entitled after him in remainder, would find their inheritance in the mines gone without adequate consideration. If the term "*tentale*"

^a 2 Scho. & Lef. 552.

had not been found in the leasing power, but the only terms had been the best and most rent, it would, I think, have been impossible to hold that the mode of reserving the rent at variance with the established custom, and leading to such obvious injury to the inheritance, was a reservation of the best and most rent; but the will here, I think, has sufficiently guarded against any such danger, by pointing out the kind of rent to be reserved. Another part of the agreement, directly at variance with the power, is a provision for a renewal, on the payment of a fine of 1000*l.* according to the agreement. The lease would contain a covenant for this purpose, but by the memorandums the lease is only to be required if it can be made conformable, both to the agreement and the will, which in this respect is impossible. If the plaintiff says that he is willing to give up this covenant, the answer is, that he cannot do so, having known the extent of the vendor's power, and having specifically contracted that the performance of the contract should be conditional upon the vendor having the power to carry the whole into effect. I think this ground alone is quite sufficient for the dismissal of the bill; it would be, therefore unnecessary to express any decided opinion upon the other parts of the case, but, I by no means, wish to be understood that I should have thought this a case for a specific performance, if the defendant had been owner of the fee. The provision of the agreement are contrary to the custom, unequal and improvident, and calculated to give the lessee the property of the lessor, without securing to him any adequate return, which could not have been his intention, and was obtained from him under an injunction of secrecy, and without professional advice, either as to the value of the property or proper mode of managing, or the legal consequence of what he was asked to do. It was argued, indeed, that the defendant chose to manage his own property, and that he was quite competent so to do. The first part of the proposition appears to be true, but the latter is disproved by the facts. There is not any class of persons inore likely to be imposed on than those who think themselves competent to manage their own affairs, but who have not the knowledge or experience necessary for that purpose. The case of *Wentworth v. Turner*,^b has been referred to, but it has no application to these circumstances, and if it had, it could only be applicable to the cross suit. The plaintiff alleges that he has incurred expence, and laid out money, upon the faith of his agreement; but this cannot raise any equity for him against the leasing power, and if he has done so, he did it at his peril, because on the 29th of August, 1835, at the latest, he knew of the defendant's title by the will. In the view I take of this case, it is not necessary to say anything as to the provisions of the will with respect to the underletting. The bill for a specific performance must be dismissed with costs; and I

think the cross bill must be also dismissed with costs; for although I cannot approve of the manner in which the agreement was procured from Mr. Lyon, I do not think such a case has been made out as would have induced me to deprive Mr. Ord of any benefit he might have been able to obtain at law under it, if it was of a nature enabling him so to do. I do not apprehend there was any such object in filing Mr. Lyon's bill; but that it was filed as a means of meeting Mr. Ord's bill. If Mr. Lyon had filed a bill of discovery for that purpose, he must have paid the costs of it; and the adding a prayer for relief, to support which no sufficient case has been made, ought not to affect the relative position of the parties in that respect.

Ord v. Lyon, and Lyon v. Ord, at Westminster, May 8th, 1841.

Rolls.

SPECIFIC PERFORMANCE.—CONSTRUCTION OF WILL.—WORDS OF RECOMMENDATION.

We have received the following statement from a correspondent, in reference to our report of a case at the Rolls, *Brierly v. Boucher*, p. 71, *ante*.

"The objection made, was, to the purchaser paying the plaintiff's costs, when his Lordship said, that it was a fair question to be raised by the purchaser, and each party were directed to pay their own costs, in these words in the minutes of the decree, and the Court did not think fit to give any costs on either side. The note you will find at the head of the report, is in contradiction to the objections as stated to have been made in respect of costs, after his Lordship had decided the point at issue between the parties, and the note as to costs should have been worded thus:—

"In a suit for a specific performance, the Court will not direct costs to be paid by a purchaser who has taken a fair objection upon a point of construction, where the decision may be against him."

We think also that there is some misconception of what is stated to have been advanced by Mr. Pemberton and Mr. E. Girdlestone, *contra*, "that all the terms used in the will, with reference to the bequests to Nathan, must be considered as words of recommendation, and that there was a distinct trust in favour of the testator's son, Owen."

Whereas it has always been the opinion of several eminent conveyancers and gentlemen at the Equity Bar, among whom are Mr. Brodie, Mr. Duval, Mr. Atherley, Mr. Kindersly, Mr. Metcalf, and we believe Mr. Pemberton, and Mr. E. Girdlestone, to whom the clause had been submitted respecting the testator's particular request, "that his son Nathan should make a will, and, if he have no family, that the brewing plant and public houses may be left by him to his testator's son, Owen, was merely recommendatory, and that there was no trust, or executory devise, in favour of Owen."

See *Lanole v. Shaw*, 1 Lloyd & Gould, 164. If property be given by will absolutely, and

^b 3 Ves. jun. 3.

without restriction, the Court will not lightly impose upon it a trust, upon mere words of recommendation or confidence.

We would also notice that in 1826 a bill was filed by Owen Gray, then an infant, by his next friend, against Nathan Gray, to restrain Nathan from selling and disposing of the said brewing plant and public houses, or any part thereof; to which Nathan put in his answer, contending that he was entitled to an estate in fee-simple, in such parts as were freehold, and to an absolute right in such parts as were personal, without any trust whatever in favour of the complainant, &c.; and the cause was heard before the *Vice-Chancellor* on the 30th June, 1827, who expressed his opinion "that the words in the will were merely recommendatory, and he ordered the plaintiff's bill to be dismissed without costs."

The plaintiffs are mortgagees, with powers of sale from Nathan Gray, who became a bankrupt in 1838, and the plaintiffs sold under their powers.

[There is a typographical error in the note at the head of the report, the word "to" after "costs," being printed for "against."

If the minutes of the decree contain the words above stated, they are most likely to represent the substance of what passed respecting the purchaser's costs, for as the observations of counsel and of the Court, upon this part of the case, were carried on quite in a conversational tone, it was very difficult to collect what was said.

With regard to the arguments of Mr. Pemberton and Mr. E. Girdlestone, the report certainly contains an accurate statement of the effect of such arguments, whatever opinions may have been previously expressed.—*Ed.*]

Queen's Bench.

[Before the four Judges.]

LIBEL.—PRACTICE.—CRIMINAL INFORMATION.—COSTS.

A party who applies for a criminal information for a libel must abstain from attacking in any way the persons against whom he makes the application. He must leave his vindication wholly in the hands of the Court. When a rule is discharged on a preliminary objection, the Court will not discharge it with costs.

In this case a rule had been obtained for a criminal information to be filed against the defendants for inserting in their paper certain resolutions alleged to be libellous. The resolutions were agreed to by the board of guardians of the Basford Union, in answer to certain charges brought against them by a magistrate of the county. This magistrate, believing his character to be attacked in the resolutions, wrote a letter to the editor of the Nottingham Journal denouncing the attack as "scandalously false, and without the shadow of foundation," and using other strong epithets concerning it, and demanding to know the name of the

author. He sent copies of this letter to the editors of other papers.

Mr. Balfour (with whom were Mr. Hill and Mr. Hayes), in shewing cause against the rule, insisted that as the prosecutor had thus taken his own vindication into his own hands, he was not entitled to sustain this application.

Mr. Wildman, *contra*, contended that the circumstances of this case did not bring it within the general rule—that the prosecutor in writing to demand the name of the author, that he might take legal proceedings against that person, was not strictly prohibited from expressing a strong denial of what he conceived to be a serious imputation on his character.

Lord Denman, C. J.—He has done more than that here. The persons who come to this Court for its summary interposition in their favour, must leave themselves wholly in the hands of the Court. If in any way whatever they make attacks on the parties they complain of, they will not be entitled to our interference. This has been stated again and again, with the utmost simplicity and clearness, without any little qualifications that might render the application of the rule doubtful. The rule must be discharged.

The defendant's counsel applied for costs.

Lord Denman, C. J.—When a rule is discharged upon a preliminary objection only, it is not the practice of this Court to grant costs.

Rule discharged, but without costs.—*The Queen v. The Proprietors of the Nottingham Journal and others*, T. T. 1841. Q. B. F. J.

COSTS OF ISSUES.

Notwithstanding the rule Hilary Term, 4 W. 4, s. 7, a judge may still certify under the 4 & 5 Anne, c. 16, s. 4, that a defendant who has pleaded special pleas had probable cause for pleading them, and thus deprive the plaintiff of the costs of the issues on these pleas, though those issues have been found against the defendant.

Mr. Erle moved for a rule to shew cause why the master should not review his taxation of costs. There had been certain special pleas put upon the record, which had been found against the defendant, but the judge at the trial had given a certificate to the effect that there was probable cause for pleading them, and the master had allowed the defendant the costs of these pleas on taxation. The case of *Robinson v. Messenger*,^a may be considered as opposed to this application, but it is submitted that it will not govern the present case. The costs there were settled under the rule of Hilary Term, 4 W. 4, but the costs in this case are not subject to that rule, nor to the provisions of the statute under which that rule was made. The statute of Anne gives to the plaintiff the costs of the pleas found for him unless the judge shall certify to deprive of such costs. Now if the defendant here claims the costs by virtue of the rule of court, he in effect claims them by virtue of the statute

^a 8 Ad. & El. 606; 16 L. O. 484.

of William, for the rules were made under the authority of that statute, and then he cannot be affected by the certificate which refers entirely to the statute of Anne, but has no application to the statute of Will. 4. The latter statute does not give the judge the power to certify, but gives the costs as the consequence of the finding of the issues. *Bird v. Higginson*,^b shews that the costs of any particular issue follow the finding upon that issue. [Mr. Justice *Putteson*.—The pleas here are pleaded by virtue of the statute of Anne]. That is so, and therefore the provisions of the statute of Will. 4, will not affect them.

Per Cur.—We cannot now unravel the decision we made in *Robinson v. Messenger*.^c

Rule refused.—*Fry v. Monckton*, T. T. 1841. Q. B. F. J.

Queen's Bench Practice Court.

STRIKING ATTORNEY OFF THE ROLL.—CONSPIRACY.—LIBEL.—EXTORTION.

The Court would not allow an attorney to be re-admitted who had been twice convicted of conspiracy to extort money, by means of publishing libels in a newspaper.

In this case, an attorney who had ceased to take out his certificate for more than a year, and was then off the roll, appeared in the usual manner, giving the usual notice.

Robinson appeared on the part of the Law Institution, to oppose his re-admission, on the ground that the attorney had been twice convicted of a conspiracy to extort money by publishing libels in a newspaper called the *Paul Pry*. For the first offence he was sentenced to twelve months' imprisonment, and for the second to nine months' imprisonment. Both sentences he had undergone. Under these circumstances it was submitted that the applicant for re-admission was an unfit person to be restored to the roll of attorneys.

V. Lee appeared to support the application, and contended that the offence of conspiracy was one which varied so much in its circumstances and nature, that the Court would not consider the mere fact of the conviction to be a ground for refusing the applicant's prayer for re-admission. Besides, he had already suffered the punishment for the offence imputed, but if he was to be perpetually debarred from practicing, his punishment would be perpetual. This the Court would hardly think necessary.

Wightman, J. thought that the nature of the offence of which the attorney had been convicted was such that he ought not to be restored to the rolls of the Court.

Application refused. — *Ex parte Haddon*, T. T., 1841, Q. B. P. C.

EJECTMENT.—RESTITUTION OF POSSESSION.—OUSTER.—FORCIBLE ENTRY.

A defendant in ejectment having forcibly taken possession of premises of which the sheriff had dispossessed him, and given to the lessors of the plaintiff in ejectment, the Court ordered a writ of restitution to restore possession within a week.

This was an action of ejectment. The lessor of the plaintiff having recovered, a writ of *habere facias possessionem* was issued to the sheriff, and his officers having dispossessed the defendant, gave possession of the premises in question to the lessor of the plaintiff. This was in the afternoon. During the night, the defendant came to the premises and forcibly took possession of them. Under these circumstances,

Petersdorff moved for a rule to shew cause why an attachment should not issue against the defendant, or why a writ of restitution should not issue to compel the restoration of the premises to the lessor of the plaintiff.

Fortescue shewed cause against this rule, and contended that the lessor of the plaintiff having been put into possession, he was bound to protect his possession, and if he was dispossessed, the only remedy open to him was by an action of ejectment. The summary interference of the Court in such a case was unprecedented.

Petersdorff, in support of the rule, contended that the defendant had treated the process and proceedings of the Court with contempt, and rendered the act of the sheriff, as well as the proceedings in the action of ejectment, completely abortive. The Court would not, under such circumstances, compel the lessor of the plaintiff again to have recourse to an action of ejectment.

Wightman, J., thought that a writ of attachment ought not to issue, but that defendant must give possession of the premises within a week, and that a writ of possession should issue for that purpose, within that time, and that the defendant should also, within that time, pay the costs of the present application.

Rule absolute accordingly.—*Doe d. Pritchard v. Roe*, T. T. 1841. Q. B. P. C.

SITTINGS OF THE COURTS.

Queen's Bench.

The Court of Queen's Bench will continue to sit in Middlesex, on Monday, June 28th, Tuesday, June 29th, and Wednesday, June 30th, and will proceed to London for the trial of causes on Thursday, July 1st, to which day the Sittings will, on the adjournment day, be further postponed. And the special juries will begin on Wednesday the 7th, instead of Monday the 5th of July.

^b 2 Har. & Wol. 278; 5 Adol. & El. 83.
^c 16 L. O. 484.

CIRCUITS OF THE JUDGES.

ENGLAND AND WALES.

SUMMER CIRCUITS, 1841.	NORTHERN.	HOME.	N. WALES.	S. WALES.	MIDLAND.	NORFOLK.	OXFORD.	WESTERN.
	Ld. Denman J. Wightman	L. C. J. Tindal J. Bosanquet	Ld. Abinger.	J. Erskine.	B. Parke. B. Gurney.	B. Alderson J. Williams.	J. Coleridge J. Coltman	J. Maule. B. Rolfe.
Sat. July 8	-	-	-	Cardiff	-	-	-	-
Thursday 8	-	-	-	Cardmarthen	-	-	Abingdon	-
Saturday 10	York & city	-	Newtown	-	-	Buckingham	Oxford	W. nchester
Monday 12	-	-	-	-	Northamp-	-	-	-
Wednesday 14	-	Hertford	-	Haverford-	(ton Bedford	-	Worcester &	-
Friday 16	-	-	Cardigan	(west & town	Oakham	-	[city	-
Saturday 17	-	-	-	-	Lincoln and	Huntingd'n	-	-
Monday 19	-	Chelmsford	-	-	[city	Cambridge	-	Devizes
Tuesday 20	-	-	Beaumaris	-	-	-	-	-
Wednesday 21	-	-	-	Brecon	-	-	-	-
Thursday 22	-	-	-	-	Nottingham	-	-	-
Friday 23	-	-	Ruthin	Presteign	[and town	-	-	-
Saturday 24	Durham	-	-	-	-	Norwich &	Shrewsbury	Dorchester
Monday 26	-	Maldstone	Mold	-	Derby	[city	-	-
Wednesday 28	-	-	Chester	Chester	-	-	Hereford	Exeter & [city
Thursday 29	Newcastle &	-	-	-	-	Ipswich	-	-
Friday 30	[town	-	-	-	Leicester &	-	-	-
Saturday 31	-	-	-	-	[B.	-	Monmouth	-
Mon. Aug. 2	-	Lewes	-	-	-	-	-	-
Tuesday 3	Carlisle	-	-	-	-	-	-	-
Wednesday 4	-	-	-	-	Coventry &	-	Gloucester	Bodmin
Saturday 7	Appleby	-	-	-	[Warwick	-	[& city	-
Monday 9	-	-	-	-	-	-	-	-
Tuesday 10	Lancaster	Croydon	-	-	-	-	-	Bridgewater
Saturday 14	Liverpool	-	-	-	-	-	-	Bristol
Wednesday 18	-	-	-	-	-	-	-	-

LAW BILLS IN PARLIAMENT.

Royal Assents.

21 June 1841.

Law Stamps.
Banks of Issue.
Ecclesiastical Commissioners.
Court of Chancery.
Tithes Recovery.
Copyhold and Customary Tenure.
Felony Explanations.
Frivolous Suits.
Municipal Corporations.
Sewers.
Turnpike Roads.
Highways.

Small Debts Courts for
Exeter. Stoke-on-Trent.
Hatfield. Saint Helen's.
King's Norton. Burnley.
Launceston. Salisbury.
Blackburn. Sleaford.
Wigan. Gainsborough.
Newark. East Retford.
Totness.

22d June.

Usury on Bills.
Punishment of Death.
Bribery at Elections.
Election Petitions Trial.
Highway Rates.
Loan Societies.

House of Lords.

The Bills waiting for second reading at the close of the Session were the following:

Double Costs.

Criminal Justice, Quarter Sessions.

Principal and Factor.

Marriages Act Amendment.

The following waited for third reading:
Criminal Justice.

The speech of her Majesty, on proroguing Parliament on Tuesday the 22d, contains no reference to Law Reform, or the Administration of Justice.

THE EDITOR'S LETTER BOX.

A correspondent in Glamorganshire is informed that he can only serve one year with the agent of the attorney to whom he is articulated, and that he must either deduct the four months he has already been in London, or serve an additional four months to the country attorney; otherwise, the latter cannot truly certify that four years have been served with him. The change of agent makes no other difference than that each must answer the questions as to the time served with him.

We recommend J. R. B., and "A Country Subscriber," to consult the "Articled Clerks' Manual," for the list of books they want. The notices of new works contained in our past volumes will also assist them.

The letters of H. W. and A. shall be attended to.

The Legal Observer.

MONTHLY RECORD FOR JUNE, 1841.

— "Quod magis ad nos
Pertinet, et nescire malum est, agitamus."

HORAT.

THE LEGAL ANTIQUARY.

EGYPTIAN CONVEYANCE OF INCORPOREAL HEREDITAMENTS.

THE Egyptian deed published in our number of August, 1840, was not unknown to the literary, but we believe it was entirely new to the legal reader, and it appears to have excited so much interest, that we are induced to add another, much more curious as a legal instrument, for it not only purports to be the conveyance of an incorporeal hereditament, but it even throws light upon the law of descent in Egypt. It is one of those mentioned in our Monthly Record for May last, p. 88, *ante*, and it is dated in another reign, twenty-four years later than the former deed.

The former deed conveys nothing but what all nations have hitherto made the subject of conveyance, that is to say, *land*; but this, as we have already said, is a conveyance of an *incorporeal hereditament*, which appears peculiar to the Egyptians, namely, the offerings and oblations for the dead, and may account for the very extraordinary clause of warranty which it contains, and which was wanting in the former deed. Nor must we here confound the Greek functionaries with the Egyptian rites and customs, but must bear in mind that the former were merely administering the laws of a conquered people, as they found them; and therefore, if we are surprised at the refinement of a period so remote, our admiration must be given, not to the Greek, but to the Egyptian institutions, where it is justly due. It will be seen by the very names that all the Greek authorities do is

to record Egyptian acts, and probably after the same methods they had learned in Egypt, for we are not aware that any such were practised amongst themselves.

We have said that this document throws light upon the Egyptian *laws of succession*, and we were led to this conclusion in endeavouring to account for this being the conveyance of the half of a third, and can only account for it thus. It will be observed, that this deed mentions three children of Horus and of Senpoeris, *viz.* Onnophris the grantor, Horus his brother, the grantee, and Asos. Now we presume that at the death of Horus the father this property descended equally to his three sons, but that Asos having died previous to the date of the conveyance, his third became divisible between his two surviving brothers, Onnophris and Horus; and we think this is the meaning of the recital in the body of the deed, though it is somewhat obscurely stated or perhaps translated; and this seems to have been the course of descent, even though Asos might have left children, for in the former deed we find Nechutes, the son of Asos, acquiring property by purchase in his own right. It is true, there might have been other children of Horus and Senpoeris; but then we think the statement that this conveyance of the half of a third is to make up the third, shuts out that presumption, and shews that the original division was into thirds, and not into sixths.

It should seem, therefore, that in the Egyptian laws of descent, the son did not stand in the place of the deceased father, but that his title was postponed to that of his uncles, the more immediate descendants

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of the first purchaser. The whole is peculiarly curious, and certainly not very favorable to the boasted march of intellect; for if it proves any thing, it proves that though the customs of nations may differ, things were conducted much in the same way two thousand years ago at Thebes as they are in this day in London; that the Egyptians, too, had their certain laws of descent; their corporeal and incorporeal hereditaments; their Register Office for Thebes; nay, even their duty on sales, though it is more than probable that this last is the only boon they owed to their Grecian conquerors.

The following is the document we refer to, being

A Translation of the Enchorial Papyrus of Puris, containing the original deed relating to the Mummies.

THIS writing, dated in the year 36, Athyr 20, in the reigns of our sovereigns Ptolemy and Cleopatra his sister, &c., Declares the dresser in the Temple of the goddess Onophris, the son of Horus, and of Senpoeris, daughter of Spotus, aged about 40, lively, tall, of a sallow complexion, hollow-eyed, and bald, in the Temple of the goddess, to Horus his brother, the son of Horus and of Senpoeris, has sold for a price in money half of one third of the collections for the dead (priests of Osiris)* lying in Thynabunum in the Lybian suburb of Thebes, in the Memnonia; likewise half of one third of the Liturgies, their names being Muthis, the son of Spotus, with his children and his household, Chapocrates, the son of Nechthmonthes, with his children and his household, Arsiesis, the son of Nechthmontes, with his children and his household, Petemestus, the son of Nechthmonthes, Arsiesis, the son of Zminis, with his children and his household, Oeoreris, the son of Horus, with his children and his household, Spotus, the son of Chapochonsis, surnamed Zoglyphus, (the sculptor) with his children and his household, while there belonged also to Asos, the son of Horus and of Senpoeris, daughter of Spotus, in the same manner, one half of a third of the collections for the dead, and of the fruits and so forth..... he sold it on the 20th of Athyr, in the reign of the king ever living, to complete the third part; likewise the half of one third of the collections relating to Pateutemis, with his

* These words between a parenthesis appear to be an interpolation of the translator, with a note of interrogation thus (Priests of Osiris?)

household; and likewise the half of one third of the collections and fruits for Patechonsis, the bearer of milk, and of the place on the Asian side called Phrecages, and..... and the dead bodies in it, there having belonged to Asos, the son of Horus, one half of the same, he has sold to him in the month of..... the half of one third of the collections for the priests of Osiris, lying in Thynabunum, with their children and their households; likewise the half of one third of collections for Pateutemis, and also for Patechonsis, the bearer of milk, in the place Phrecages on the Asian side. I have received for them their price in silver and gold, and I make no further demand on thee for them, from the present day before the authorities, and if any one shall disturb thee in the possession of them, I will resist him, and if I do not succeed, I will indemnify thee. Executed and confirmed. Written by Horus, the son of Phabis, clerk to the chief priests of Amonrasonthor, and of the contemplar gods, of the beneficent gods, of the father loving gods, of the paternal gods, and of the mother loving gods. Amen. Names of the witnesses present.

Then on a column at the edge of the paper are eighteen witnesses.

The Registry of the Greek Autigraph of Mr. Gray.

Copy of the Registry.—In the year 36, the ninth of Choebah (4), transacted at the table in Diospolis, at which Lysimachus is the president of the 20th department, in the account of Asclepiades and Zminis, farmers of the tax, in which the subscribing clerk is Ptolemæus, the purchaser Horus, the son of Horus the dresser, a part of the sum collected by them on account of the dead bodies lying in Thynabunum, in the Memnonian tombs of the Lybian suburbs of Thebes, for the services which are performed. Bought of Onnophris the son of Horus, pieces of brass 400. Z. The end.

LYSIMACHUS subscribes.

REMARKABLE WILLS.

No. III.

HENRY THE SECOND.

* Henricus Dei gratia rex Angliæ, Dux Normanniæ et Aquitanie, comes Andegavie, Henrico regi, et Ricardo, et Galfrido, et Johanni filiis suis; archiepiscopis, episcopis, abbatibus, archidiaconis, decanis, comitibus, baronibus, justiciariis, vicecomitibus, ministris, and omnibus laicis totius terre sue citra mare et ultra, hominibus et fidelibus suis tam clericis quam

salutem. Notum vobis facio, quod apud Waltham, presentibus episcopis R. Wintoniensi et J. Norwicensi, & G. cancellario filio meo,* et magistro Waltero [de] Constantiis archidiacono Oxon. et Godefrido de Luci archidiacono de Derebi, & Ranulfo de Glanvilla, et Rogero filio Nelfridi, et Hugone de Morewic, & Radulfo filio Stephani camerario, et Willelmo Rufo, feci divisam meam de quadam parte pecunie mee in hunc modum: domui militie templi Jerusalem mmmmm marcas argenti, domui hospitali Jerusalem mmmmm marcas argenti; et ad communem defensionem terre Jerusalem mmmmm marcas argenti, per manum magistrorum templi et hospitalis Jerusalem & visum eorundem habendas; prater pecuniam illam quam prius predictis domibus templi et hospitalis commiseram custodiendam; quam similiter dono ad defensionem ipsius terre Jerusalem, nisi eam in vita mea repetere voluero; et aliis domibus religiosis totius Jerusalem, et leprosis et inclusis et heremitis ejusdem terre mmmmm marcas argenti, dividendas per manum patriarche Jerusalem, & visum episcoporum terre Jerusalem, et magistrorum templi et hospitalis; domibus religiosis Anglie, monachorum, canonicorum, sanctimonialium, & leprosis, et inclusis, & heremitis ipsius terre mmmmm marcas argenti, dividendas per manum et visum R. archiepiscopi Cant. et R. Winton' et B. Wigorn' et G. Elyen' et J. Norwic' episcoporum, et Ranulfi de Glanvilla justiciarii Anglie; domibus religiosis Normannie, monachorum, canonicorum, sanctimonialium, et inclusis, et heremitis ejusdem terre mmm marcas argenti, dividendas per manum et visum archiepiscopi Rothomagensis, et Baiocensis, et Abrincensis, et Sagiensis, et Ebroicensis episcoporum; domibus leprosororum ipsius ecc marcas argenti per manum et visum predictorum dividendas; monialibus Moretonie c marcas argenti; monialibus de Viliers extra Faleisiam c marcas argenti; domibus religiosis terre comitis Andegavie patris mei, exceptis sanctimonialibus de ordine fontis Ebraldi, m marcas argenti per manus episcoporum Cenomannensis et Andegavensis dividendas; ipsis autem sanctimonialibus Fontis Ebraldi, et domibus ipsius ordinis, mm marcas argenti, dividendas per manum et visum abbatissae Fontis Ebraldi; sanctimonialibus sancti Sulpicii Britannie c marcas argenti; domui et toti ordini Grandis Montis mmm marcas argenti; domui & toti ordini de Chartusa mm marcas argenti; domui Cisterii et omnibus domibus ipsius ordinis exceptis domibus ejusdem ordinis que in terra mea sunt quibus divisam meam feci, mm marcas argenti, dividendas per visum et manum abbatis Cisterii et Clarevallis; domui Cluniaci m marcas argenti, prater hoc quod eidem domui accommodavi, quod ei per dono nisi in vita mea repetere voluero; domui Majoris Monasterii per dono m marcas argenti quas ei commodavi, nisi eas in vita mea repetere voluero; sanctimonialibus de Mautilli o marcas

argenti; domui de Premonstrato et toti ordini exceptis domibus ejusdem ordinis que in terra mea sunt, cc marcas argenti; domui de Arrodus et toti ordini, exceptis domibus ejusdem ordinis terre mee, c marcas argenti; ad maritandas pauperes et liberas foeminas Anglie que carent auxilio, ccc marcas auri, dividendas per manum et visum R. Wintoniensi et B. Wigorn', et G. Elyensis, et J. Norwicensis episcoporum, et Ranulfi de Glanvilla; ad maritandas pauperes et liberas foeminas Normannie que carent auxilio, c marcas auri, dividendas per manum et visum Rothomagensis archiepiscopi, et Baiocensis et Abrincensis, et Sagiensis, et Ebroicensis episcoporum; ad maritandas [pauperes] et liberas foeminas de terra comitis Andegavie patris mei c marcas auri, per manum et visum Cenomannensis et Andegavensis episcoporum dividendas. Hanc autem divisam feci imprædicto loco anno incarnationis Domini mclxxxiii. Quam vobis filiis meis per fidem quam mihi debetis et sacramentum quod mihi jurastis, præcepto ut firmiter et inviolabiliter teneri faciatis; et quod super eos qui ipsam fecerint manum non apponatis; et quicunque contra hoc venire presumpserit, indignationem et iram omnipotentis Dei, et maledictionem ipsius Dei et meam incurrat. Vobis etiam archiepiscopis et episcopis mando, ut per sacramentum quod mihi fecistis, et fidem quam Deo et mihi debetis, in synodiis vestris sollempniter accensis candelis excommunicetis et excommunicare faciatis omnes illos qui hanc divisam meam infringere presumpserint: et sciatis quod dominus papa hanc divisam meam scripto et sigillo suo confirmavit sub interminatione anathematis."

Ex antiquo Cod. MS. Feodorum militum Anglie penes Remem. Regis, fol. 1. Habet hunc titulum sive rubricam,

"Hoc est Testamentum illustrissimi Regis "Henrici Secundi Anglie."

This will is printed in Madox's *Formulare Anglicanum*, p. 421; and the following is a translation of it into old English in Langtofts' *Rhy-ming Chronicle*, vol. 1, p. 135.

Than said Sir Henry, nedes burd him wende
To France & Normundie, to witte a certain ende.
At Parys wild he be, at ther parlement.
Ther wille wald he se, to what thei wild consent.
At the duzeppers the soth wild he wite,
And on what maners, & wharto he suld lite,
And whedir thei wild to werre, or thei wild nouht,
Or alle in luf sperre that thing that thei had wrouht.
He sauh wele bi signe, he drough fast tilde elde,
Long myght he not regne, ne on his lif belde.
Wherfor Henry said he wild, or he went,
That the summe wer laid of his testament.
List & I salle rede the parcelles what amonntes,
If any man in dede wille keste in a countes.

De testamento Henrici secundi, facto apud Waltham, per totum.

Sex thousand marke tilde Acres did he send.
Ageyn hit coming thidere, bi marchanda so he wend.

Fifty thousand marcs had he lent abbeis,
That wer in pouerte, up tham forto reise.
Alle that was gyuen, and befor hand lent,
That was tot in cofre, whan he mad testament.

* This was Geoffrey (Henry's son by fair Rosamond) Chancellor of England and Archbishop of York.

Of that that was in cofre, & in his cofines,
 He mad his testament, als did other pilgrimes.
 To Waltham gede the kyng, his testament to
 make,
 And thus quathe he his thing, for his soule sake.
 To temples in Acres^b he quath five thousand marke,
 And five thousand to the hospitale, for thei were in
 karke.
 To the folk that duelled, Acres for to fende,
 Other five thousand marke he gaf thaim to spende.
 Tille other houses of the cuntre five thousand
 marke he gaf,
 Tille heremites & tille seke men, & other suilk raf,
 Tille monkes & tochanons, that were in Ingland,
 Five thousand make resceyued thei of his hond.
 To tho of that religion, that were in Normundie,
 Five thousand mark unto ther tresorie.
 And to mysellc houses of that same lond,
 Thre thousand mark unto ther spense he fond.
 To ladies of habite, Vilers & Mortayn,
 He gaf two hundreth mark, I trowe thei were fayn
 To tho religiouses that were in Gascoyne,
 He gaf a thousand mark, withouten essayne.
 To thaim of Pounz Eberard, ther his body lis,
 He gaf two thousand mark, tho ladies of pris.
 To the ladies of Bretayn, men calle Seynt Suplice,
 He gaf a hundreth mark, to mend ther office.
 To the houses of Chartres two thousand mark bi
 counte,
 And thre thousand mark to the ordre of Grant
 mounte.
 To the ordre of Cisteaus he gaf two thousand mark,
 The ordre of Clony a thousand, to lay np in arke.
 The ordre of Premonstere two hundreth mark thei
 had.
 To the ladies of Markayne a hundreh mark thei
 lad.
 To the houses of Arroys, that ere bigond the se,
 Two hundreth mark thorgh testament gaf he.
 To women of England of gentile lynage,
 A hundredh mark of gold, to ther mariage.
 To gentille, and tille other, that were in Nor-
 mundie,
 A hundredh mark of gold thei had to ther partie.
 To gentille women of Aniowe, of non auancement,
 A hundredh mark of gold unto thaim was sent.
 Withouten this testament that he did witen,
 And the grete tresore tille Acres was witen,
 And that he lent religiouse to bring thaim aboue,
 Forty thousand mark he gaf for Gode loue.
 Whan the kynn Henry had mad his testament,
 Height his oste redy, and to Parys went.

POINTS IN COMMON LAW PRACTICE, BY QUESTION AND ANSWER. No. VII.

WITNESSES.

119. What is necessary to be done to entitle a party to the costs of proving a written or printed document at the trial of an action?
120. What proceeding is necessary to be taken to enable a party to recover the expense of a witness called to prove the handwriting to or execution of a written instrument.
121. At what stage of the cause must such proceeding be taken, and on what conditions will an order be granted?
122. What is the mode of proceeding to ob-

^b By "Acres" is intended Jerusalem.

tain the evidence of witnesses residing in the East Indies, or other colonies of this country?

123. State the purport of the affidavit necessary to support the application relating to such witnesses.
124. Are there any and what conditions imposed upon a defendant in making such application?
125. Are there any and what cases in which an examination before commissioners may be taken *viâ voce*?
126. May witnesses residing in this country be examined under any and what circumstances before the trial of a cause?
127. Can witnesses be compelled, and how, to attend before a commissioner or other examiner?
128. In case documents are in the possession of a third person, what is the mode of proceeding to enforce the production?
129. Under what circumstances will an examination, or deposition, be received in evidence on the trial of a cause?
130. What is the rule with respect to the costs of examining witnesses under a commission or order?
131. Where a document required to be produced in evidence is in the possession not of a third person, but of a party in the cause, what course must be pursued to obtain it?
132. Are there any and what cases in which a secondary evidence of a document may be given without previous notice of production?
133. Must a notice to produce, in order to let in secondary evidence, be served on the party or attorney?
134. Are there any and what parts of the United Kingdom in which a subpoena cannot be effectually served on a witness to compel his attendance in England?
135. At what length of time before the trial of a cause must a subpoena be served?
136. At what time of the day or night may the service of a subpoena be made?
137. Can a subpoena be legally served on a Sunday?
138. Is it necessary to tender or pay any and what sum to a witness residing in town, in order to compel his attendance in a town cause?
139. In case a witness residing at a distance has not been paid his expenses, and to what amount, can he refuse to give evidence at the trial?

POWER OF COURTS TO COMMIT FOR CONTEMPT.

THE East India papers which we have recently received, are full of a case before Sir H. Roper, the Chief Justice of the Supreme Court of Bombay. It appears that the learned judge had made some animadversions on an

eminent mercantile house, and their cause was taken up with great warmth by two of the newspapers, and articles were inserted which Sir *H. Roper* deemed not only libellous, but, in the language of the law, "scandalizing and importing scorn and reproach, or diminution of the Court."

For this offence the proprietors of the papers were called upon to shew cause why an attachment should not issue against them. It appears that Mr. *Cochrane*, their counsel, was very zealous and eloquent in their defence, but we must confine ourselves to the legal portion of his address. He said—

"The question in this case is not whether these papers are libels, but whether the Court can entertain jurisdiction over them as contempts.—Lord *Eldon*, in a note to 1 Jac. & Walk. 167, observes, 'that the Court has no jurisdiction over it as a libel, and that it can be only complained of as a contempt.' The same principle is supported by the observations of Lord *Hardwicke*, in 2 Atk. 469. I think it therefore wholly beside the present question to enquire whether this be or be not a libel. If the Court possesses jurisdiction, it must be supported on the ground of its being a contempt.

"The cases that bear on the present question are not very numerous. Before I bend my attention to the argument of Chief Justice *Wilmot*—in his extra judicial observations on the case of the *King v. Almon*—let me see whether any sound principle can be extracted from the decisions themselves, and whether one can derive any support from the conduct of Judges, whose judicial conduct has been slandered.—The first case I would call the Court's attention to is *Pool v. Sacheverel*, 1 P. Williams, 675.—That was a case of a party advertizing a reward of 100*l.* to any one who could make proof of a particular marriage. A motion was made against the party for a contempt. 'The Lord Chancellor observed that it tended to the suborning of witnesses in a cause then pending. To this it was objected that the matter was over, both the sentence in the Spiritual Court and the trial. "Not so," says the Lord Chancellor, "it is not over, for if affidavits came in proving what was desired, it might induce the Court to overturn all proceedings." The next case is that of the *Champion and St. James' Evening Post*, 2 Atk. 469. In this case, Lord *Hardwicke* observes 'that it was incumbent on Courts of Justice to preserve their proceedings from being misrepresented, and that the minds of the public should not be prejudiced before a case is heard.'

"In both these cases proceedings were pending, and the power of committal in such cases is absolutely necessary to the very existence of a Court; the authority they possess is co-existent with their establishment. Let me now see what has been the course pursued by the Judges in England, when their conduct has been impugned. I wish from such cases to

deduce an inferential argument against the power contended for here. The first is *Jeff's case*, Cro. Car. 175. There he was indicted for a libel against Chief Justice *Coke*, stating the judgment of the Court to be treason, and calling the Chief Justice a traitor and perjured Judge, he fixed the libel on the great gate entering Westminster Hall; on this he was indicted, convicted and punished. The next case is *Harrison's case*, Croke, 503. There a gross insult was offered to Mr. Justice *Hutton* in open Court, the party was indicted, convicted and punished, and heavy damages were recovered by the Judge for the slander. The third is the case of the *King v. White*, 1 Camp. 359. That was an information filed by the Attorney-General for a libel against Mr. Justice *Le Blanc*, charging him and the jury in the grossest language with letting a murderer escape. The prisoner was indicted, found guilty, and punished. The fourth case is reported at page 170 of Holt. on Libel. It is the case of the *King* against *Hart* for a libel on Lord *Ellenborough*, charging him with disgracing his station, and preventing justice being done. The prisoner was tried and found guilty, on an information filed against him by the Attorney-General. In all these cases, the Judges proceeded by the constitutional remedy of information or indictment, and so far as their authority is concerned, they negative the necessity and propriety of proceeding by attachment. Let me now see how far the cases have gone with regard to subordinate magistrates; and the argument will only differ in degree, for all are appointed to support the King's justice. The first is the case of the *Queen v. Langley*, 2 Salk. 697—where gross language was used regarding a mayor; and at the same page there is reported the case of the *Queen v. Wrightson*, where a man speaking of the warrant of a Justice of the Peace, calls him a fool, an ass, and a coxcomb; yet these words were not even sufficient to support an indictment, and declared to be mere breaches of good manners.

"Let me in trying such authority call your Lordship's attention to 3 Hawk., section 36, book 2, chapter 22, where, observing on the power of the Court to commit for contempt, you will find that every one of the cases cited by him in support of the Court's right are cases of obstruction to the process itself during the pendency of some proceeding, and do not in fact support the principle here contended for.

"There are one or two cases more which appear to me to shew that the opinion of Chief Justice *Wilmot* is not supported by modern practice. Before I do so, permit me to observe, that if the 53 Geo. 3. c. 127, be the Court's guide in matters of Ecclesiastical contempts—this does not come under that statute, for there only contempts in the face of the Court are specified. The first cases I have above alluded to as laying down a rule different from that of Chief Justice *Wilmot*, is the case of *Adams v. Hughes*, 1 Brod. & Bing. 24, where a party on being served with process collars the officer and forces him to quit

presence. There an attachment was refused on the ground that there was *no obstruction of the Court's process*. The next is the case of *Myers v. Miles*, 4 Moore, 147, where a defendant being served with process, tore up the writ and threw it at the officer. There the Court refused an attachment, saying, that if the officer had been prevented serving the writ, the Court would have grounds to interfere, but being served they refused the attachment.

The next is the case of the *King v. Gilham*, 1 Moo. & Mal. 165. There a party exhibited inflammatory publications respecting a murder about to be tried, and there *Littledale* and *Guslee* held, though indecorous, it was not a contempt,

"Such cases appear to me to bear strongly against the power assumed by the Court. I am ready to rest this question on the decision of the Judges of the land—they are the only proper interpreters of the law—their decisions should be our guide."

We cannot spare room for more of the report of the case than the following abridgment of Sir *H. Roper's* Judgment. He said:

"Without insisting on the publication of this article, as a constructive contempt, it is sufficient for me to observe I have no doubt it is a direct and positive contempt, as being a libel on the administration of justice in this and other Courts, and as containing words scandalizing and importing scorn, reproach or diminution of the Court. That publishing such matters is a contempt of the highest order is apparent from 2 Hawkins, 220; the Practical Registrar, 133; the anonymous case in 1 Salkeld, 841; *Roache v. Garrew*, 2 Atk. 471, and many other authorities.

"The article of the 9th of March unequivocally charges the Court with having 'evinced an inclination to support the interests of the Ecclesiastical Registrar by discouraging to the utmost all claims to administration by those who, though not next of kin to deceased persons, nevertheless enjoyed their confidence when alive.' It also unequivocally imputes to the Court 'partiality to the registrar.' The matter therefore comes within *Watson's case*, *Lieutenant Frye's case*, and that class of cases. The effect would be to deter the Court from receiving applications on behalf of the Registrar as freely as the applications would otherwise be received, lest partiality should be imputed to the Court. The publishing such an article is unquestionably a contempt.

"It is said the Courts never punish summarily or proceed by attachment, unless where the process or progress of justice is obstructed by the contempt, and certainly not when the case has been adjudged, and is at an end. But what was done in the anonymous case in 1 Salkeld? The party had been served with the rule; therefore there was no obstruction; but having said he did not care for the Court—he was proceeded against by attachment, and the attachment was issued in the 1st instance.

"Again, as to not proceeding as for a contempt where the cause has been decided, read what was done in *Frye's case*, reported in the notes in Holt on Libel, page 158.

"Lieutenant Frye, of the marines, in the year 1743, was sentenced to fifteen years' imprisonment by a court-martial. For this most iniquitous sentence he brought an action against the president of the court-martial, and recovered 1,000*l.* damages. In pursuance of what fell from the judge who tried the cause, the plaintiff commenced actions against the other members of the court-martial who had passed the sentence, and they were arrested by *capias* at the breaking up of the court-martial against admiral Lestock, of which they had also been members. This court-martial took upon itself to pass some resolutions reflecting on Sir John Willes, chief justice of the Court of Common Pleas, which were laid before the king. Upon this, the chief justice caused every member of the court to be taken into custody, and was proceeding to assert and maintain the authority of his office, when a written and contrite submission, signed by all the members of the court, stayed the progress of justice. The submission, transmitted to the Lord Chief Justice, was ordered to be read in open Court, and to be registered in the Remembrancer's office, and it also appears in the London Gazette of 15th November, 1746. 'A memorial (as observed by the Lord Chief Justice) to the present and future ages, that whoever set themselves up in opposition to the laws, or think themselves above the law, will, in the end, find themselves mistaken.'"—*C. Pl. Ms.* 1743.

Also see the case of the *Corporation of Norwich*.

"As where one Hurry, having been maliciously prosecuted for perjury by the defendant and acquitted; and after having recovered large damages for the malicious prosecution, from one Watson,—the corporation of Norwich, of which he was a member, made an order in their books, voting him 2,300*l.* in consideration of the verdict against him, and declaring it was done in consideration of his having been actuated by motives of public justice, and for preserving the rights of the corporation, and supporting the honour and credit of the chief magistrate. The Court of K. B. held this to be a libel on their proceedings and the administration of justice, and made a rule absolute for an information against the defendants. In that case, *Buller*, Justice, observed, 'nothing can be of greater importance to the welfare of the public, than to put a stop to the animadversions and censures which are so frequently made upon courts of justice in this country. They can be of no service, and may be attended with the most mischievous consequences.'

"It is undoubtedly allowable to discuss in a decent and temperate manner the proceedings of a court of justice—to suggest error, and with a view to fair criticism, to censure what is apparently wrong. Mr. Justice *Grace's* observations in the *King v. White* supports that doctrine.

"It is said no power to proceed by attachment in such a case exists according to Magna Charta or the law. But it is rather too late to contend for such a doctrine; and the opinions of Mr. Justice *Wilmot* are recognized and approved of by Mr. Justice *Holroyd* in *The King v. Clement*, and by others, and Mr. Justice *Holroyd* was not then Attorney-General or Counsel, but was delivering a solemn judgment on the case before the Court.

"It has been suggested, the proper or only course in such a case is to proceed by information or indictment. That it is not the only course is obvious from *Frye's case*, and other cases in which the Court have treated the like offence as contempts, and punished them summarily:—that it is not the usual course of proceeding for contempts is equally obvious from the same authorities. As Mr. Baron *Wood* said with reference to *The King v. Clement*,—"If the only proper proceeding were by indictment that would be a salvo; for a Judge, if he could not take a ninth more summary course, but were obliged to await the result of an indictment before he could enforce his authority, would be a mere cipher on the Bench." Mr. Baron *Graham* and Mr. Baron *Garrow* expressed the like sentiments. Here the summary proceeding is peculiarly suitable, the offence being great, the supposed offenders being numerous, wealthy, and influential, and their conduct and perseverance evincing a disposition on their part to resist and set themselves above the law. It might also be observed that a great number of gentlemen of the mercantile profession are associated as proprietors of these newspapers. The circumstance renders the proceeding by indictment or information very objectionable.—Must not such a body have great influence? and it seems to me expedient that an insult of this description to a Court situated as this Court is, in a small society, at a great distance from home, and without the same facilities that might exist in England for the trial of such a matter by an impartial jury, should be taken notice of summarily, and in such a way as to show the Court is fully empowered to vindicate and protect itself.

"*Teffe's case* has been relied on as showing, that even when Sir Edward Coke was libelled, the proceeding was by indictment. But the facilities for procuring a fair trial of such a matter in England are, and then especially were, much greater than they are here; the evils of delay and forbearance to assert promptly and summarily the dignity of the Court, were also much less than they are here, and when *Teffe* put in a scandalous plea without any further proceeding or any trial, he was at once committed, adjudged to be put in the pillory, with a paper mentioning the offence—to be brought, with such paper, to all the Courts at Westminster, and to be continued in prison till he made his submission in every Court.

"No advantage can be derived from subtle distinctions as to whether the Court was sitting or not sitting at the time of committing the alleged contempt. Mr. Justice *Holroyd* says in his judgment in *The King v. Clement*, p. 233,

"It is perfectly clear, as to the Courts at Westminster, that contempts may not only be in the face of the Court, but that they may be committed out of the Court." In the argument of *Wilmot*, C. J., in *The King v. Almon*, he shews clearly 'that publications libelling the Superior Courts may be punished as contempts. In the 2d Volume of Hawkins's Pleas of the Crown, p. 206, an attachment for a contempt is mentioned as process which may be answered by the discretion of the justices upon a bare suggestion on their own knowledge without any appeal, indictment, or information. The same doctrine is recognised in Comyn's Digest, and in Blackstone's Commentaries, 4th vol. p. 286.

"If the contempt be committed in the face of the Court, the offender may be instantly apprehended and imprisoned, at the discretion of the judges,^a without any farther proof or examination. But in matters that arise at a distance, and of which the Court cannot have so perfect a knowledge unless by the confession of the party or the testimony of others, if the judges upon *affidavit* see sufficient ground to suspect that a contempt has been committed, they either make a rule on the suspected party to show cause why an attachment should not be issued against him; or, in very flagrant instances of contempt, the attachment issues in the first instance;^b as it also does, if no sufficient cause be shewn to discharge, and thereupon the Court confirms, and makes absolute, the original rule. (20) This process of attachment is merely intended to bring the party into Court: and, when there, he must either stand committed, or put in bail, in order to answer upon oath to such interrogatories as shall be administered to him, for the better information of the Court with respect to the circumstances of the contempt. These interrogatories are in the nature of a charge or accusation, and must by the course of the Court be exhibited within the first four days;^d and if any of the interrogatories be improper, the defendant may refuse to answer it, and move the Court to have it struck out.^e If the party can clear himself upon oath, he is discharged, but, if perjured, may be prosecuted for the perjury.^f If he confesses the contempt, the Court will proceed to correct him by fine, or imprisonment, or both, and sometimes by a corporal or infamous punishment. If the contempt be of such a nature, that, when the fact is once acknowledged, the Court can receive no farther information by interrogatories than it is already possessed of (as in the case of a *rescous*), the defendant may be admitted to make such simple acknowledgment, and receive his judgment without answering to any interrogatories."

The result was, upon a statement by the proprietors of the newspaper, that they were ignorant of the insertion of the offensive articles, the rule was discharged.

^a Standa. P. C. 73, b.

^b Styl. 277.

^c Sulk. 84 Stra. 185, 564.

^d 6 Mod. 73.

^e Stra. 444.

^f 6 Mod. 73.

ADMISSION OF PAROL EVIDENCE TO EXPLAIN DOCUMENTS.

My remarks, favoured by insertion, *ante*, p. 21, were made with the view of inviting attention to the dicta of C. J. Abbott and Holroyd, J., in *Doe v. Benson*, 4 B. & A. 588, upholding a distinction between deeds and parol instruments in reference to the admission of evidence to vary the *prima facie* meaning of the language used. I examined several cases to shew that if evidence of local usage and understanding was admissible to control the legal interpretation of one instrument, there was neither reason nor authority against applying the same doctrine to the other.

I hesitated over the observations of T. F. J. *ante*, p. 118, and felt doubtful if they were sufficient to induce me to solicit the favour of insertion of a reply, for, notwithstanding an imposing shew of authorities, I can detect none which I had not myself fairly brought under attention. However, some inaccuracies appear to require correction.

Forley v. Wood, as reported in 1 Esp. 198, is alleged to contain a remark of Lord Kenyon's "that the lessor of the plaintiff, being a corporation, could only make a lease *by deed* under the corporation seal; and that this, therefore, was only the common case of a demise to the plaintiff in ejectment, which was never expected to be proved." From this observation T. F. J. deduces the very "clear" consequence that the Chief Justice assumed the instrument was *by parol*! I cannot imagine a reason for citing this remark, since it really has no bearing upon the subject, unless T. F. J.'s most unhappy deduction were intended to enlist attention to the apparent fact that the instrument was a *deed*, in which case it is a direct authority for my position. A demise not requiring proof is one thing: permitting it to be varied by parol evidence when put in, is another.

The dicta in *Doe v. Benson* and *Den v. Hopkinson*, 3 D. & R. 607, are undoubtedly deserving the greatest respect; but I had previously mentioned them as the very subjects for consideration—to quote them as decisive authorities is to assume all that is in question.

Smith v. Walton, 8 Bing. 235, must, unquestionably, be ranked as a high authority for the point it decides; but that is nothing to the purpose. As to *Doe v. Lea*, 11 East, 312, T. F. J. is wholly wrong in stating I impugned it. My observations on the contrary were directed to shew it had nothing to do with the question. T. F. J. asserts it decided the evidence, of which we are speaking, was inadmissible. If this were matter of opinion I should leave his remark alone, but as it is pure fact, I can only ascribe it to thoughtlessness, since the report will speak for itself, that no such evidence was even offered in the case.

As T. F. J. gave me no authorities to consider, I was in hopes of discovering some elucidation of principle, and, as one most desirous of instruction, I could not but feel disappointment at meeting with no more than a prefatory observation which roundly assumed all

that was in difference. This is the less pardonable, as he has not even couched the assumption in words free from the danger of misleading, for, when he says the exclusion of the evidence which may be admitted to explain an unsealed instrument from all effect when there happens to be a seal "is only a part and parcel of one great and intelligible system, throughout every ramification of which the same distinction is observable." it is apparent that the ramifications were either so numerous or intricate as to daunt his courage to investigate them, or he would have found *Smith v. Wilson*, 3 B. & Ad. 728, where the word "thousand" in a *deed* was, through parol evidence, shewn to mean "twelve hundred," and *Clayton v. Gregson*, 4 Nev. & Man. 602, where the word "level" was interpreted by the admission of similar evidence, most hostile to the harmony of the great and intelligible system he lays down. In both these cases *deeds* were controlled in their meaning by *parol evidence of local understanding*, and I can see no reason for the rejection of such evidence offered in explanation of one word which is not equally applicable to any other.

J. B. W.

[Presuming that J. B. W. had a right to reply to T. F. J., we have inserted the above letter, and here the controversy may, for the present, be closed. Ed.]

SUGGESTED IMPROVEMENTS IN PRACTICE.

SWEARING AFFIDAVITS.

THE public are subject to a great inconvenience in this large city, to which I think it only requires that attention should be drawn, in order to induce those who have the power to remedy it—I allude to there being *one office only* in London where Chancery affidavits can be sworn. The hours during which this office is open, render it difficult to obtain the voluntary attendance of a merchant, or of any man engaged in business. What objection is there, of sufficient weight, to prevent the affidavits being made in the county of Middlesex and adjoining counties, or city of London, before any solicitor in Chancery? If an affidavit from a party residing at Romford, in Essex, be wanted, he must come to Southampton Buildings to make it. The suitors suffer great injury from the present arrangement. The principle of receiving affidavits made before solicitors who are Masters Extraordinary, residing beyond a certain distance from the metropolis, is admitted, and works well enough. Why not extend the principle, for the convenience of the merchants, bankers and tradesmen of London, and for the benefit of the suitors of the Court who are often unable to obtain from those who can give it, the voluntary evidence, because they must take a journey in the most busy part of their day, and leave important matters of their own, to assist a person who is, perhaps, a stranger to them.

FAIR PLAY.

BARRISTERS CALLED.

Trinity Term, 1841.

LINCOLN'S INN.

11th June.

Thomas Goulbourne Parker
Edward John Collingwood
John Pritchard
William Norris Nicholson
Algernon Cox
Bentham Dumont Koe
Wales Christopher Hotson
George Augustus Payne

INNER TEMPLE.

11th June.

John Eustace Grubb
Stephen Barney
Mowhay Morris
Thomas Henry Fellow Haddan
John Clerk
Joseph Alfred Hardcastle
Edward William St. John
Nicholas Nathaniel Philipps
Thomas Allen
William Breynton

MIDDLE TEMPLE.

28th May.

Henry Pearson
Edward Clarke
John Lang
Edward Joscelyn Baumgartner

11th June.

Richard Alexander Price
Frederic Thompson
Arthur Smith
George Latham Browne
Henry James
Francis Stokes
Thomas Francis Oliver
Arthur Pymonds
John Herschner
Jasper Farmer Cargill

GRAY'S INN.

9th June.

Thomas Parsons
William Brown
John Henry Cooke
Thomas Harttree Cornish
Daniel Newton Crouch

ATTORNEYS TO BE ADMITTED.

Michaelmas Term, 1841.

QUEEN'S BENCH.

[Continued from p. 107.]

Clerk's Name and Residence.

To whom articulated, assigned, &c.

Parkin, George Lewis, Regent's Square, St. Pancras.

William Parkin, Chancery Lane.

Postlethwaite, Thomas, 3, Sidmouth Place; and Workington.

Michael Walker, Whiteheaven; assigned to Charles Thompson, Workington.

Richardson, William, 22, New Millman St.

William Richardson, Walbrook.

Rogers, Thomas, the younger, 4, Princes St.; and Helston.

Thomas Rogers, Helston.

Rundle, George Henry Ellery, Stamford Hill; and Penny Cross.

John Beer, Devonport.

Roose, Benjamin, Amlwich.

George Bradley Roose, Amlwich.

Ridly, John, Newcastle-upon-Tyne.

John Anderson Pybus, Newcastle-upon-Tyne.

Robinson, Carew Sanders, Croydon.

William Furner, Brighton; assigned to Chas. Chatfield, Cornhill.

Rawlins, Thomas, 2, Queen Square, Bloomsbury; Cerne Abbas; Harpur Street; and Judd Street.

John Fraumton, Cerne Abbas.

Ratcliffe, William Edward, Union Terrace, Camden Town; Weymouth; and Great Ormond Street.

John Henning, Weymouth; assigned to John Peter Fearon, 1, Crown Office Row.

Robins, Josiah, Birmingham.

John B. Williams, the elder, Shrewsbury; assigned to Robert Gillan, the younger, Birmingham.

Richards, Charles, Furnival's Inn; and Wem.

Thomas Dickkin Brown, Wem.

Richardson, John, Leeds.

Thomas Richardson, Thirsk; assigned to George Rawson, the younger, Leeds.

Robinson, John, Frederick, 27, Great Russell Street, Hadleigh.

Henry Oſferd, Hadleigh; assigned to Charles John Wishaw, South Square, Gray's Inn.

Clerk's Name and Residence.

Raynar, William Thompson, 98, Upper Stamford Street, Leeds.
 Patrick, Charles George Henry St., 37, Gloucester Street, Queen Square; Ottery, St. Mary; and Lincoln's Inn Fields.
 Smith, George, the younger, Altrincham.
 Shershy, John, Woolwich.
 Smith, John, 7, Castle Street, Bloomsbury; and Alfred Street.
 Sidney, William John, 6, Southampton Place, New Road; and Stockton.
 Stroughill, Charles, 3, Verulam Buildings, Frinshury; and South Street.
 Smith, Francis, Blandford Forum.
 Swaine, William Alexander, 12, Egmont Place, Old Kent Road.
 Symes, John David, 66, Goswell Street; and Crediton.
 Street, John Widgery, Exeter.
 Symonds, James Frederick, 20, Featherstone Buildings.
 Sweetland, John Park, 5, New Millman Street.
 Stirke, Henry, Ashton-under-Lyne.
 Scrutton, John, Bristol.
 Sketchley, Samuel, 13, Old Square, Lincoln's Inn; and East Retford.
 Sudlow, Alfred, 24, Compton Terrace, Islington.
 Sabine, Henry, 7, Charlotte Street, Bloomsbury.
 Solly, James Smith, Sandwich.
 Stockley, Richard, St. Andrew's Road, Southwark; 3, Bengal Place; and Trinity Terrace.
 Thackwray, Joseph William, 32, Great James Street.
 Trevor, Thomas Tudor, Gisborough; Stockton on Tees; and University Street.
 Tassell, James, 8, Windsor Place.
 Thomas, Evan, 3, Gray's Inn Square; Brecon.
 Tomlinson, John, Nottingham Park.
 Taylor, George, 15, Park Terrace, Camden Town; and Dukinfield.
 Vivian, James William, 56, Guildford Street.
 Urmsom, John, 2, Frederick's Place, Gray's Inn Road; Kenton Street; and Warrington.
 Vipan, Edward Joseph, 93, Quadrant, Regent Street.
 Weston, Arthur Warne, 5, Staple Inn; Bedford Street; and Lancaster Place.
 Waller, William Henry, Stafford Row, Pimlico.
 Whitevay, John Harris, 143, St. John Street Road; and Newton Abbott.
 Wortham, Cecil Proctor, the younger, 4, Hertford Cottages, Hertford Road; and Buntingford.
 Wise, William Howard, Nottingham.
 Whitehouse, Thomas, 9, Laubroke Terrace, Notting Hill.
 Young, James, 67, Farringdon Street.

To whom articulated, assigned, &c.

John Rayner, Leeds.
 Francis George Coleridge, Ottery St. Mary.
 George Smith, Manchester.
 William Nokes, Woolwich.
 Charles Bayley, Winchester, assigned to Charles Parker, Princes Street.
 Joseph Radcliffe Wilson, Stockton.
 John Gibbs, Stroud.
 Septimus Smith, Blandford Forum.
 William Ranson, Stowmarket; assigned to Richard Hart, Cornhill.
 George Tanner, Crediton; assigned to John E. Fox, Finsbury Circus.
 Charles H. Turner, Exeter.
 Samuel Beale, Upton-upon-Severn; assigned to George Hall, New Boswell Court.
 Henry Rivington Hill, Throgmorton Street.
 James Mellor, Ashton-under-Lyne.
 Peter Lamb Hussey, Maidstone; assigned to Robert Osborne, Bristol.
 John Mee, East Retford.
 John James Joseph Sudlow, Chancery Lane; assigned to William Fisher, Chancery Lane; assigned to Josiah Wilkinson, Chancery Lane.
 John William James Dawson, 7, Charlotte Street, Bloomsbury.
 John Mourilyan, Sandwich.
 Joseph Smith, Coleman Sareet; assigned to J. B. Smedley, New Inn; assigned to Edwin Smith, Bridger Street; assigned to Charles Elmes Parker, Princess Street, Spitalfields.
 William Loaden, Great James Street.
 Thomas Henry Faber, Stockton; assigned to Henry Clarke, Gisborough.
 Edward Watts, Hythe.
 David Thomas, Brecon.
 Edward Percy, Nottingham.
 James Brown Brooke, Ashton-under-Lyne.
 Charles Clarke, Lincoln's Inn Fields.
 William Beaumont, Warrington.
 Frederick Lane, King's Lynn.
 William Hale, Bath.
 James Scarlett Price, Burford.
 Parmenas Pearce, Newton Abbot; assigned to Joseph B. Bullock, George Street.
 Cecil Proctor Wortham, senior, Buntingford.
 William Wise, Nottingham.
 Richard Whitehouse, Chancery Lane.
 Robert Home, Berwick-upon-Tweed; assigned to William Willory, Berwick-upon-Tweed.

Added to the List pursuant to Judge's Order.

Clerk's Name and Residence.

To whom articulated, assigned, &c.

Ford, William Augustus, 8, Henrietta Street; and Kensington.	George Samuel Ford, Henrietta Street.
Judge, Thomas Gulliver, Banbury.	Thomas Tims, Banbury.
Lilley, Joseph, Peckham.	Samuel Isaac Lilley, Peckham.
Moore, James, 15, Lambeth Road; and Chester Place.	Thomas Whalley Bolton, Elm Court
Sawdrey, William David, 25, Henrietta St.; and Cheadle.	Peter Barber, Middlewich; assigned to Thos. Richard, Northwick; assigned to John Catlew, Cheadle.
Sallory, James, 4, Thornhill Bridge Place, Museum Street; and Nottingham.	John Brewster, Nottingham.
Taylor, Henry Charles, 14, Orange Street, Bloomsbury.	John Kendall Beswick, Birmingham.

CANDIDATES PASSED AT THE EXAMINATION.

Trinity Term, 1841.

Name of Applicant.

Andrews, James Hadfield
Archer, Thomas Coates
Barber, Samuel
Bencraft, Lionel Thomas

Boase, William Davey

Bramwell, Henry Clifford
Burder, John

Bush, John Jones
Byers, James Broff
Byrne, Edmund
Camden, Charles Taylor
Carlyon, Edward Trewbody
Church, Edmund Boyle
Codd, Henry

Collins, William Hutcheson
Connington, James William
Cottrell, William
Crompton, John
Crowdy, George Frederick
Cundy, Charles Fislake
Cunliffe, John, jun.
Dalton, George Wilkinson

Davies, John Evan
Dunsford, Francis
Ellis, Arthur
Elsdale, Robinson Tunstall
Foote, William
Fox, Charles Barton
Gardner, James

Giles, Nethom John
Gipps, Thomas
Grant, Joseph Humphry
Gray, Christopher
Greaves, Charles Lemon

Greenwell, Henry

Greville, Peniston Grosvenor
Gwyn, William Horatio
Hall, Giles

Name & Residence of Attorney to whom articulated, assigned, &c.

Edward Chippindall Milne, Manchester.
Charles George Parker, Chelmsford.
George Frederick Prince Sutton, 6, Basinghall Street.
William Mitchell, Petersfield; assigned to Thomas Coppard, Horsham, Sussex; assigned to William Gribble, of Barnstaple.

Matthew Austis, Liskeard; assigned to John Sargeant, Liskeard.

William Henry Trinder, 1, John Street, Bedford Row.
Thomas Evans, Hereford; assigned to William Gilmore Bolton, 25, Austin Friars.

Elijah Bush, Trowbridge.
John Bridden Jeffries, Carmarthen.
Henry Weeks, 12, Cook's Court, Lincoln's Inn.

Thomas France, 24, Bedford Row, Holborn.

John Carlyon, Truro.

Edward Frowd, 33, Essex Street, Strand.

William Codd, jun., Maldon; assigned to William Batty, Charles Street.

John Stratford Collins, Ross.

Francis Thirkell, and Henry Rogers, Boston.

Edward Bower, Birmingham.

James Whitehead, Oldham, Lancaster.

Richard Wheeler Crowdy, Farringdon.

Thomas Clarke, 43, Craven Street, Strand.

Richard Pilkington, Preston.

Octavius Robert Wilkinson, St. Neots; assigned to Samuel White Sweet, of Basinghall Street.

John Kerle, Haberfield, Bristol.

John Nicholetts, South Petherton, Somerset.

Ambrose Lace, Liverpool.

Ellis Cunliffe, Manchester.

Ezra Eagles, Bedford.

Joseph Maberley, King's Road, Bedford Row.

Joseph Sherwood, 9, Dean Street, Southwark; assigned to Walter Laudor, Rugeley, Stafford.

George Paulson Wragge, Birmingham.

John Edward Fullager, Lewes.

Henry Francis, Monument Yard.

Edwin Eddison, Leeds.

Thomas Rodgers, 9, Devonshire Square; assigned to Edward Elkins, 59, Newman Street.

George Appleby, Durham; assigned to Robert Ingram Shafto, Durham.

Arthur Greville, 3, Sun Court, Cornhill.

Isaac Preston, jun., Great Yarmouth.

Robert Wilton, Gloucester; assigned to Henry Hammond, 16, Furnival's Inn.

<i>Name of Applicant.</i>	<i>Name & Residence of Attorney to whom articulated, assigned, &c.</i>
Hanbury, Oliver Lunn	Henry Lucas, Newport Pagnell.
Haurott, Philip Augustus	Philip Augustus Haurott, the elder, 29, Queen Square, Bloomsbury.
Hanaler, Henry Stephen	John Whitelock, 70, Aldermanbury.
Harting, Joseph Thomas	Charles Francis Arundell, 3, Cork Street, Burlington Gardens.
Hartley, William	Charles Wilson, 6, Southampton Street, Bloomsbury.
Hawley, Henry John Toovey	John Peter Fearon, 1, Crown Office Row, Inner Temple, London.
Hinrich, Henry	Andrew Hinrich, 9, John Street, Adelphi; assigned to James Knowles, Buckingham Street, Adelphi.
Hodgson, George	Percival Fenwick, Newcastle-upon-Tyne.
Hooper, John	George Hooper, Dunstable, Bedford; assigned to George Morton, Gray's Inn; assigned to James Williamson, Gray's Inn.
Ingoldby, Christopher, jun.	Christopher Ingoldby, Louth.
Isaacson, George	Wotton Isaacson and Edmund Denton Isaacson, of Mildehall, Suffolk.
Jacques, Frederick Viel	Thomas Jacques, Bristol.
Johnson, William	Aaron Eccles, Marple, near Stockport, Cheshire.
Kelly, William Robert	Edward Willan, 7, Gray's Inn Square.
Kershaw, John	Robert Kershaw, Manchester.
Langdale, William Atkinson	William Stephens, 30, Bedford Row.
Lawford, Henry Smith	Edward Lawford, Draper's Hall.
Marshall, Henry	George Marshall, Berwick-upon-Tweed.
Mead, Joseph Choat Sawen	Gilbert Bolden, 18, Exeter Street, Strand.
Mence, Charles Turner	William Cooke Mence, Barnsley.
Merivale, John Lewis	Henry Young, 12, Essex Street.
Milner, William	William Garwood, York.
Mott, Thomas	Samuel Thomas Mott, Much Hadham, Herts.
Munton, William	John Munton, Banbury.
Musgrave, John	Richard Armstead, Whitehaven.
Pain, John	William Pain Beecham, Hawkhurst, Kent; assigned to Thomas Pain, Dover.
Parkin, George Lewis	William Parkin, 43, Chancery Lane.
Parkinson, Frederick Kidman	George Capes, 5 Raymond Buildings, Gray's Inn; assigned to George Haalehurst Bullivant, 32, Alfred Place, Bedford Square.
Paterson, William Benjamin	Thomas Mortimer Cleobury, of 21, Warwick Street, Regent Street.
Place, John Swayne	David Powell, Neath; assigned to Thomas Loftus, New Inn.
Poole, Joseph Ruscombe, the younger	Joshua Ruscombe Poole, the elder, Bridgwater; assigned to Archibald Keightley, 43, Chancery Lane; re-assigned to Joshua Ruscombe Poole, the elder, Bridgwater.
Pope, Benjamin David	William Samuel Price Hughes, Worcester; assigned to Henry Saunders, Kidderminster.
Postlewaite, Thomas	Richard Walker, Whitehaven; assigned to Charles Thompson, Workington, Cumberland.
Richardson, William, the younger	William Richardson, the elder, Walbrook.
Robinson, Carew Saunders	William Fumer, Brighton; assigned to Charles Chatfield, 22, Cornhill.
Rollit, John	William Dryden, Kingston-upon-Hull.
Roxhy, Joseph	John Tinley, North Shields, Northumberland.
Patrick, Charles George Henry	Francis George Culeridge, Ottery St. Mary.
Sandford, Edward	Richard Ford, Stafford; assigned to Harwood Thomas, Shrewsbury.
Savory, Thomas	John Freame Ranney, Great Yarmouth.
Sawyer, John	William Evereat, Epsom; assigned to James Burton, Queen Square, Bloomsbury.
Serattton, Daniel	James Parker, Chelmsford.
Seckerson, Henry Barlow	Philip Seckerson, Stafford; assigned to Edward Bell, Stafford.
Sharp, Frank	Stephen Heelis, Manchester.
Smith, William Severn	William Cox, Daventry.
Sowdon, Henry Best	Thomas Hardwick, Hereford.
Sownton, Matthias James	William Sowton, Chichester.
Squire, Charles James	Richard Jago Squire, Plymouth; assigned to James Brook Odeham.

<i>Name of Applicant.</i>	<i>Name & Residence of Attorney to whom articulated, assigned, &c.</i>
Story, John Samuel, the younger	John Samuel Story, St. Albans, Herts; assigned to Charles Alliston, Freeman's Court, Cornhill.
Sweetland, John Park	Henry Rivington Hill, 23, Trogmorton Street.
Taylor, Henry	Charles Frederick Collins, 33, Spital Square; assigned to John Fox, 1 Basinghall Street.
Taylor, Michael Coulson	William Slater, York; assigned to D'Arcy Strangeways, Barnard's Inn.
Thistleton, George, the younger	Charles Bird, Liverpool.
Todd, Charles Spilman	John Hewitt Galloway, Kingston-upon-Hull.
Toogood, Henry	John Thomas Miller, 3, Furnival's Inn; assigned to Thomas Walker, 3, Furnival's Inn.
Trollope, Charles	Theod Pearce, the younger, Bedford.
Vaughan, John Lingard	Roger Rowson Lingard, Heaton Norris; assigned to Charles Back, 46, Chancery Lane; re-assigned to Roger Rowson Lingard.
Vipan, Edward Joseph	Frederick Lane, King's Lynn, Norfolk.
Walker, George Henry	George Harris, Rugby.
Westwood, William	Robert Montague Hume, 44, Lincoln's Inn Fields, and 29, Allsop Terrace, New Road.
Wilkinson, Samuel	Joseph John Wright, Sunderland.
Witney, Samuel	Samuel Witney, the elder, Colchester; assigned to Grantham Robert Dodd, New Broad Street; assigned to Joseph Phillips, Chippenham.
Young, James	Robert Horne, Berwick-upon-Tweed; assigned to William Willohy, Berwick-upon-Tweed.
Bousfield, William Cheek, the younger	Edward Bousfield, Chatham Place; assigned to Charles Thick, South Square; assigned to William Dawes, Sergeant's Inn.

MISCELLANEA.

ELOQUENCE OF BRITISH LAWYERS. BROUGHAM.

"Abuses are generally of slow growth, they creep into public institutions with a sure pace, and if unchecked, do so embody themselves in a charity, that they at last disfigure it to such extent as to bring themselves into notice; and true indeed, such abuses may then be removed, but not without a thorough purification of the charity continued in active progress till soundness be restored, which certainly takes much labor and some period of time; and where the change for the worse is rapid, and the abuse more glaring, men who live on the spot are not likely to court the odious office of accusing their neighbours; the grand difference, therefore between a visitor and the committee is, that the former for the most part will only examine where there is a charge, when the latter are to examine at all events, to find out whether there be ground for a charge, although no charge has been made, and also to make things so as to prevent abuse arising, by showing the openings where abuses can creep in at. Vol. iii. 36.

"Chancery cannot interfere in charities unless an actual abuse of the funds has been made, for the visitor generally is empowered by the donor to have despotic authority as to the manner, and when the funds are to be applied; but is to see that eventually the funds benefit the charity, and if funds be misapplied

fraudulently, direct 'that chancery interposes, to carry out the will of the donor.' Vol. iii. 38.

"As sure as man is mortal, and to err human, justice deferred heightens the price at which you yourselves must purchase safety and peace." Vol. ii. 629.

"What, my lords! the aristocracy set themselves in a mass against the people: they who sprang from the people,—are inseparably connected with the people—are supported by the people—are the natural chiefs of the people! They set themselves against the people, for whom peers are ennobled, bishops consecrated, kings anointed, parliament assembled, and who, without the people, would sink into a powerless crowd; and slaves, to one another, would not have a dignified existence beyond an hour. I repel it with scorn as a calumny or a falsehood." Vol. ii. 626.

LIST OF NEW PUBLICATIONS.

Chitty and Forster's Digested Index to the Common Law Reports relating to Conveyancing and Bankruptcy, from 1558 to the present time. Price 2l. 2s. hds.

Gray's Country Attorney's Practice, 4th Edition.

Reports of Cases in the House of Lords, on Appeals from the Courts of Equity, and on Writs of Error in England and Ireland, and Questions of Peerage. Vol. I. Part I. Price 7s. 6d.

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A full Report of the case of *Martin v. Escott*, clerk, for refusing to bury an infant baptized by a Wesleyan Minister. By W. C. Curteis, Esq., L.L.D. Advocate in Doctor's Commons. Price 8s. 6d. cloth.

A Manual for Election Agents, &c. By Rulla Rouse, Esq., Barrister at Law. Price 6s. 6d.

Plain Instructions to Executors and Administrators, showing their duties and responsibilities; with Abstracts of the Legacy Acts, and forms filled up for every Bequest. By John H. Brady, late of the Legacy Duty Office. 9th Edition, 8vo. Price 8s. bds.

Jones's Attorney's Pocket Book. By John Crisp, Esq. of Gray's Inn. 7th Edition, 12mo. Price 1l. 1s. bds.

Dickinson's Guide to Quarter Sessions. By Serjeant Talfourd. Price 1l. 14s. bds.

INCORPORATED LAW SOCIETY.

MEMBERS ADMITTED.

John Arthur Buckley, Gray's Inn.
Aldred Twining, Gray's Inn.
Marshall Turner, Great George Street.
Joseph Compton Pott, Lincoln's Inn Fields.
Charles Francis Western, Great James Street.
John Poynder, the younger, Bridewell Hospital.
Michael Compport, Rochford, Essex.

MASTERS EXTRAORDINARY IN CHANCERY.

From 25th May to 18th June 1841, both inclusive, with dates when gazetted.

Dalton, Samuel, Dudley, Worcester. May 28.
Best, Charles, Birmingham. June 8.
Davenport, Robert, Liverpool. June 8.
Long, Henry Slingsby Drury, Norwich. June 15.
Pinson, John, Birmingham. June 18.

DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

From 25th May, to 18th June 1841, both inclusive, with dates when gazetted.

A'gar, John, Great Yarmouth, Norfolk, Fishing Merchant. May 28.
Kinsman, John Knill, and Henry Prichard, Lincoln's Inn Fields, Attorneys and Solicitors. June 11.
Wil Iams, Henry, and John Bethell, Lincoln's Inn Fields, Attorneys. June 15.
Callaway, George Augustus, and Charles Betteworth Hellard, Portsmouth, Southampton, Attorneys and Solicitors. June 18.

BANKRUPTCIES SUPERSEDED.

From 25th May, to 18th June, 1841, both inclusive, with dates when gazetted.

Watts, John, Wednesbury, Stafford, Cement Manufacturer. June 1.
Johnson, Richard William, and Ben Johnson, Gloucester, Wine Merchants and Distillers. June 11.
Whitham, Charles, Sheffield, York, Saw Manufacturer. June 11.
Callum, William, Pattingham, Norfolk, Farmer. June 15.
Pickering, Joseph, Bedford, Upholsterer.

BANKRUPTS.

From 25th May, to 18th June, 1841, both inclusive, with dates when gazetted.

Andrews, John, Marden Ash, near Ongar, Essex, Schoolmaster. *Cannan, Off. Ass.*; *Lofty & Co.*, King Street, Cheapside. May 25.
Abbott, Joseph Barker, and Denis M'Chreane, Liverpool, Wine Merchants. *Lowndes & Co.*, Liverpool; *Taylor & Co.*, Bedford Row. June 15.
Aspen, Joseph, Batings, Spotland, Rochdale, Lancaster, Cotton Spinner. *Johnson & Co.*, Temple; *Lord*, Rochdale. June 18.
Brown, William, Sutton-under-Whitstonecliffe, York, Cattle Dealer. *Newburn*, Great Winchester Street, London; *Newburn & Co.*, Darlington, Durham. May 25.
Buckell, Robert, Newport, Isle of Wight, Hants, Merchant. *Holme & Co.*, New Inn; *Berking-sake*, Newport. May 25.
Beardsworth, John, Wrexham, Denbigh, Timber Merchant, Tanner and Brewer. *Pinniger & Co.*, Gray's Inn Square; *Hayward*, Oswestry. May 25.
Brocklehurst, George, Henry Dicks, and John Baillie Nelson, Liverpool, Millwrights, Engineers and Founders. *Payne*, Liverpool; *Adlington & Co.*, Bedford Row. May 25.
Bennett, George John, York Street, Portman Square, Lodging House Keeper. *Torrquand, Off. Ass.*; *Hodgson & Co.*, Lincoln's Inn Fields. June 1.
Burton, William Bordesley, Aston-juxta-Birmingham, and Charles Burton, of Digbeth in Birmingham, Steel Toy and Brass and Iron Bedstead Manufacturers. *Whitelock*, Aldermanbury. June 1.
Bourne, Rowland Cotton, Birmingham, Woollen Draper. *Phillips*, Size Lane, Bucklersbury; *Partridge & Co.*, Birmingham. June 1.
Boden, John Amory, Sheffield, York, Razor Manufacturer and Merchant. *Tattershall*, Great James Street, Bedford Row; *Palfreyman*, Sheffield. June 4.
Burton, William, King Street, Soho, Upholsterer. *Whitmore, Off. Ass.*; *Olliver*, Old Jewry. June 15.
Brook, James, Frith Street, Soho, Victualler. *Johnson, Off. Ass.*; *Field*, Finchley. June 15.
Bywater, William, Hemington, Leicester, Carpenter. *Huish*, Castle Donington; *Scott*, Lincoln's Inn Fields. June 18.
Churchyard, Henry Cupper, and John Holmes, Halifax, York, Woolstaplers. *Jagurs & Co.*, Ely Place. *Stocks & Co.*, Halifax. May 28.
Campion, John, and William Campion, Whitby, York, Ship Builders. Messrs. *Tyas*, Beau-

- fort Buildings, Strand. *Walker & Co.*, Whitby. June 1.
- Campion, Robt. and John Campion, Whitby, York, Bankers. Messrs. *Tyus*, Beaufort Buildings, Strand. *Walker and Co.*, Whitby. June 1.
- Down, Henry, late of Turogmoreton Street, London, Stock Broker. *Green*, Off. Ass.; *Anderson*, Cornhill. May 25.
- Davis, Joseph, Cannon Street, London, Fleet Lane, Farringdon Street, London, and Baker Street, Portman Square, Gnn and Pistol Manufacturer and Sheffield Warehouseman and Dentist. *Alsager*, Off. Ass.; *Stevens and Co.*, Queen Street, Cheapside. May 25.
- Dickson, Geo. and Rich. Glover, Liverpool, Sved and Spice Merchants. *Taylor & Co.*, Bedford Row; *Harvey & Co.*, Liverpool. May 25.
- Doughty, James, Bristol, Victualler. *Phippen & Co.*, Bristol. May 25.
- Dickenson, James, Bramley, York, Drysalter and Cloth Manufacturer. *Debarough & Co.*, Size Lane; *Scholefield*, Leeds. May 28.
- Demaissé, Emile Morinière, and Henry Thomas Woolter, Bucklersbury, London, Merchants. *Turner & Co.*, Basing Lane. June 8.
- Davenport, William, Ashby-de-la-Zouch, Leicester, Cabinet Maker, Upholsterer, and Builder. *Fisher & Co.*, or *Dewes*, Ashby-de-la-Zouch; *Austen & Co.*, Raymond Buildings, Gray's Inn. June 8.
- Daines, John, late of Tunstall, Wolstanton, Stafford, Joiner, Cabinet Maker, and Shoe Dealer; but now of Stafford, Joiner and Cabinet Maker. *Cloves and Co.*, Temple; *Bell*, Stafford. June 15.
- Dixon, Thomas, Leeds, York, Grocer and Tallow Chandler. *Wiglesworth and Co.*, Gray's Inn Square; *Smith*, Leeds. June 15.
- Emmerson, John, Croft, York, Innkeeper. *Tilson & Co.*, Coleman Street; *Allison*, Darlington, May 25.
- Edmonds, Robert, Bennett Street, Blackfriar's Road, Surrey, Carpenter and Builder. *Johnson*, Off. Ass.; *Ashurst*, Cheapside. May 28.
- Ellwell, Henry Barber, Wolverhampton, Stafford, Jannner. *Capes & Co.*, Field Court, Gray's Inn; *Robinson*, Wolverhampton. June 8.
- Eras, George, Llanboidy, Carmarthen, Draper. *Holcombe*, Chancery Lane; *Gwynne*, Tenby. June 8.
- Edwards, David, Pembroke, Miller. *Owen*, Pembroke; *Dean*, Essex Street, Strand. June 18.
- Fisher, Francis, Wolverhampton, Stafford, Clock and Watch Manufacturer and Furniture Dealer. *Manby & Co.*, Wolverhampton; *Wright & Co.*, Golden Square. May 25.
- Freer, Elizabeth, Liverpool, Lancaster, Bookseller and Stationer. *Key & Co.*, Manchester; *Surr*, Lombard Street. May 28.
- Guest, William Seller, Chester, Tanner. *Bowers*, Chester. June 4.
- Houldsworth, William Egremont, Liscard, Chester, and of Liverpool, Brewer. *Dean*, Essex Street, Strand; *Pencech*, Liverpool. May 25.
- Hutchinson, John, Elland, Halifax, York, Machine Makers and Ironfounders. *Juques & Co.*, Ely Place; *Jevon*, Holmfirth. June 1.
- Hillary, Augustus William, Ewanrigg Hall, Cumberland, Ironfounder. *Armstrong*, Staple Inn; *Dewson*, Cockermouth. June 8.
- Henshall, William, Newcastle-under-Lyme, Stafford, Silk Throwster. *Price & Co.*, Lincoln's Inn; *Bishop*, Shelton Hall, Staffordshire Pottery. June 11.
- Hopkins, Charles, Stapleton, Gloucester, Miller. *Jones & Co.*, Crosby Square; *Peters*, Bristol. June 15.
- Hutchinson, William, Dronfield, Derby, Wine and Spirit Merchant. Messrs. *Hutchinson*, Chesterfield; *Smithson & Co.*, Southampton Buildings, Chancery Lane. June 11.
- Hoskins, Richard Howard, late of Liverpool, Victualler, but now of Manchester. *Misne & Co.*, Temple; *Crossley & Co.*, Manchester. June 18.
- Heron, James Holt, John Speir Heron, James Knight Heron, and Arthur Heron, Manchester and of Wigan, Lancaster, Cotton Spinners. *Hampson*, Manchester; *Adlington & Co.*, Bedford Row. June 18.
- Irving, George Pocock, late of Stockton-on-Tees, Durham, but now of Rotherhithe, Surrey, Ship Builder. *Lockington*, Off. Ass.; *Burkitt*, Currier's Hall, London Wall. May 28.
- Jevon, John, jun., Bilston, Stafford, Innkeeper. *Miller & Co.*, Piccadilly; *Holland*, West Bromwich. May 25.
- Kippax, James, Lockwood near Huddersfield, York, Omnibus Proprietor. *Wiglesworth & Co.*, Gray's Inn Square, London; *Stansfeld & Co.*, Halifax. May 28.
- Knapton, Thomas, Barwick in Elmet, York, Innkeeper. *Rutter & Co.*, Ely Place; *Soulby*, Leeds. June 1.
- Knight, Samuel, and James Knight, Manchester, Merchants and Calico Dealers. *Adlington & Co.*, Bedford Row; *Owen & Co.*, Manchester; *Claye & Co.*, Manchester. June 1.
- Lewis, Thomas, Lincoln, Hotel and Tavern Keeper. *Cooper*, Ironmonger Lane, Cheapside. May 25.
- Len, John, jun., Chester, Tea Dealer and Banker. *Vincent & Co.*, Temple. May 28.
- Leary, James, Quadrant, Regent Street, Coffee Housekeeper. *Gibson*, Off. Ass.; *Lewis*, Arundel Street, Strand. June 15.
- Lunn, James, Newcastle upon-Tyne, Ship and Insurance Broker, and Commission Agent. *Heuston*, Newcastle-upon-Tyne; *Currie & Co.*, New Square, Lincoln's Inn. June 15.
- Lamplugh, Thomas, Great Driffield, York, Grocer and Draper. *Walsley & Co.*, Chancery Lane; *Shepherd & Co.*, Driffield; *Thorney*, Hull. June 15.
- Mills, Aaron, Ashton-under-Lyme, Lancaster, and William Grimshaw Seed, Manchester, Cotton Manufacturers. *Key & Co.*, Manchester; *Bower & Co.*, Chancery Lane. May 25.
- Marshall, John, Bescot Hall and of Wednesbury, Stafford, Iron Master, and of Liverpool, Iron Merchant. *Lowndes & Co.*, Liverpool; *Taylor & Co.*, Bedford Row. June 4.
- Mackie, James, Liverpool, Tailor. *Adlington & Co.*, Bedford Row; *Frodsham*, Liverpool. June 4.
- Miller, Joshua, Clifton, Bristol, Cabinet Maker and Upholsterer. *Belcher*, Off. Ass.; *Bull*, Ely Place. June 8.
- Munton, William, Fletland Mills, Greatford, Lincoln, Miller. *Thompson & Co.*, Stamford. *Cloves & Co.*, Temple. June 8.
- March, Richard, Cheapside, London, Hatter. *Whitmore*, Off. Ass.; *Walsley*, North Street, Westminster. May 25.
- Marreco, Antonio Joaquim Friere, Newcastle-upon-Tyne, Merchant. *Watson & Co.*, Coleman Street; *Brockett & Co.*, Newcastle-upon-Tyne. June 15.
- McIntyre, John, Manchester, Oil-cloth Manufacturer. *Appleby*, Aldermanbury; *Grandy*, Bury. June 15.

- Morrish, John, jun., Bristol, Bottled Liquor and Porter Merchant. *Hicks & Co.*, Bartlett's Buildings, Holborn; *Hinton*, Bristol. June 15.
- Newsome, William, Dewsbury, York, Oil Crusher. *Jacques & Co.*, Ely Place. May 28.
- Prior, John, Kingston-upon-Thames, Surrey, Malster. *Turquand*, Off. Ass.; *Hartley*, Bridge Street, Blackfriars. May 25.
- Paterson, William, Chelsea, Middlesex, Brewer. *Gibson*, Off. Ass.; *Turner & Co.*, Basing Lane. May 25.
- Porter, James, Honiton, Devon, Victualler. *Smarr*, or *Flood & Co.*, Honiton; *Rhodes & Co.*, Chancery Lane. May 25.
- Potts, Cuthbert, Andrew Potts, and John Potts, Monkwearmouth Shore, Durham, Ship Builders and Boat Builders. *Moss*, Cloak Lane, London; *Brown*, Sunderland. May 25.
- Parry, William Charles Henry, Liverpool, Bookseller and Stationer. *Kay & Co.*, Manchester; *Surr*, Lombard Street. May 28.
- Prescott, John, Upholland, Wigan, Lancaster, Innkeeper and Collector of Poor Rates. *Adlington & Co.*, Bedford Row; *Leigh*, Wigan. June 11.
- Price, William Birch, and John Edwards, Shrewsbury, Salop, Bankers. *Dean*, Essex Street, Strand. *Longueville & Co.*, Oswestry. June 4.
- Porter, John, Wigganball, Saint German's, Norfolk, Builder. *Pitcher*, King's Lynn; *Cloues & Co.*, Temple. June 11.
- Phillips, Edmund John, Bristol, Victualler. *White & Co.*, Bedford Row; *Arnold*, jun., Bristol. June 18.
- Riley, Thomas, late of Fleet Street, London, now of Gough Square, Fleet Street, Printer, Bookseller, and Stationer. *Cannan*, Off. Ass.; *Fletcher*, Finsbury Square. May 28.
- Ramshay, John, Bradford, York, Grocer and Tea Dealer. *Battye & Co.*, Chancery Lane; *Wagstaff*, Bradford. May 28.
- Royston, William, Manchester, Yarn Dealer and Commission Agent. *Milne & Co.*, Temple; *Milne*, Manchester. June 1.
- Rayner, Samuel, Derby, Marble Mason, Engraver and Lithographer. *Graham*, Off. Ass.; *Valance*, Essex Street, Strand. June 15.
- Smallman, Huxley, Edgeware Road, Marylebone, Draper. *Graham*, Off. Ass.; *Drake*, Bouverie Street, Fleet Street. May 25.
- Sardinson, Edmund Palmer, John Weston, and Richard Murch, Wood Street, London, Warehousemen. *Belcher*, Off. Ass.; *Sole*, Aldermanbury. June 1.
- Skillman, Edward, and Ashley Cooper Keeler, Hythe, Kent, Linen Drapers. *Burt*, Aldermanbury. June 1.
- Smith, Thomas, Newcastle-upon-Tyne, Grocer. *Blake & Co.*, King's Road, Bedford Row; *Ingledeu*, Newcastle-upon-Tyne. June 4.
- Sugden, John, Leeds, York, Machine Maker, Iron and Brass Founder. *Dunning & Co.*, Leeds; *Smithson & Co.*, Southampton Buildings, Chancery Lane. June 15.
- Stokes, Thomas Pitt, Dudley, Worcester, Builder. *Bigg*, Southampton Buildings, Chancery Lane; *Haywood & Co.*, Birmingham; *Fel-lower*, Dudley. June 15.
- Seed, William Grimshaw, Manchester, Gingham and Calico Manufacturer and Commission Agent. *Makinson & Co.*, Temple; *Atkinson & Co.*, Manchester. May 25.
- Southee, Richard, Hertford, Innkeeper, and Wine and Spirit Merchant. *Pennell*, Off. Ass.; *Dimmock*, Size Lane. May 28.
- Smith, Richard, late of Aldgate High Street, but now of New Suffolk Street, Butcher. *Groom*, Off. Ass.; *Dean & Co.*, Fenchurch Buildings. May 28.
- Sutcliffe, Demas, Warley, Halifax, York, Manufacturer. *Hall*, Aldermanbury; *Wavel*, Halifax. May 28.
- Sidebotham, Henry, Houghton, Lancaster, and of Manchester, Cotton Manufacturer. *Walmesley & Co.*, Chancery Lane; *Humphreys & Co.*, Manchester. June 11.
- Stonham, David Hilary, Liverpool, Copper Merchant. *Cross*, Liverpool; *Vincent & Co.*, Temple. June 18.
- Sterling, George, jun., Newcastle-upon-Tyne, Boot and Shoe Maker. *Messrs. Foster*, Newcastle-upon-Tyne; *Battye & Co.*, Chancery Lane. June 18.
- Spencer, Robert, Newcastle-upon-Tyne, Scrivener. *Bell & Co.*, Bow Church Yard; *Bainbridge & Co.*, South Shields. June 18.
- Thompson, William, Monk Wearmouth Shore, Durham, Ship Builder, Ship Owner and Merchant. *Moss*, Cloak Lane, London; *Messrs. Wright or Brown*, Sunderland. May 25.
- Taylor, Thomas, Liverpool, Bookseller and Stationer. *Kay & Co.*, Manchester; *Surr*, Lombard Street. May 28.
- Thompson, Robert, Newcastle-upon-Tyne, Butcher. *Compton*, Church Court, Old Jewry. June 1.
- Tovey, Robert, Bristol, Pawnbroker. *Hartley*, Bristol; *White & Co.*, Bedford Row. June 1.
- Taylor, Frederick, Langton, Speldhurst, Kent, Plumber, Glazier and Painter. *Green*, Off. Ass.; *Egan & Co.*, Essex Street, Strand; *Stone & Son*, Tunbridge Wells. June 8.
- Taylor, John, Carmarthen, Grocer and Shopkeeper. *Poole & Co.*, Gray's Inn Square; *Linett*, Bristol. June 8.
- Thwaites, Adam, Newcastle-upon-Tyne, Brewer and Porter Merchant. *Bell & Co.*, Bow Church Yard; *Seymour*, Newcastle-upon-Tyne; *Acmir*, Gateshead. June 15.
- Taylor, Cuthbert, and Thomas Hawkey, Monk Wearmouth Shore, Durham, Ship Builders. *Swain & Co.*, Frederick's Place, Old Jewry; *Wilson*, or *Messrs. Wright*, Sunderland. June 15.
- Walford, John, Hough, Wybunbury, Chester, Grocer. *Graham*, Ironmonger Lane; *Jones*, Hough. May 25.
- White, John, Goldsmith Street, Gough Square, London, Printer. *Lackington*, Off. Ass.; *Strutt & Co.*, Ely Place. May 28.
- Woolley, Edward, Birmingham, Paper Hanging Manufacturer. *Clarke & Co.*, Lincoln's Inn Fields; *Colmore & Co.*, Birmingham. May 28.
- Williams, Benjamin, Liverpool, and of the Margam Tin Plate Works and Maesteg Iron Works, Glamorgan, Merchant and Tin Plate Manufacturer. *Brown & Co.*, Mincing Lane; *Dean*, Liverpool. June 1.

PRICES OF STOCKS, Tuesday, June 22, 1841.

3 per Cent. Reduced	- - -	89½ a ½ a ½
3½ per Cent. Reduced Annuities	-	9½ a ½ a ½
Long Annuities, expire 5th Jan. 1860	-	12½ a ½ a ½
India Bonds 3½ per Cent.	-	- 1s. dis. a 1s. pm.
3 per Cent. Cons. for opg. 16th July	-	89½ a ½ a ½ a ½ ex. div.
Exchequer Bills 1000 <i>l.</i>	a 2½	- 6s. a 8s. pm
Ditto 500 <i>l.</i>	do.	- 8s. a 6s. pm.
Ditto Small	do.	- 10s. a 12s. pm.

The Legal Observer.

SATURDAY, JULY 3, 1841.

——— “ *Quod magis ad nos
Pertinet, et nescire malum est, agitamus.*

HORAT.

EFFECT OF A CHANGE OF MINISTRY ON THE PROFESSION.

OUR readers, we will venture to say, can think of nothing else but the elections, and who are in and who are out. We know not what may be the result; but whatever may happen, we shall here express neither exultation, nor regret at the possession or transfer of power. We endeavour to represent, and at any rate we address ourselves, to the whole profession, which is composed of various parties; and we shall neither speak their united feelings, nor those of the conductors of this journal, if we here avowed any mere party predilections. Entertaining various opinions on other matters, we are united in this—a wish to preserve the common-weal and interests of the profession, and we place this on no exclusive or selfish basis; it is identical, in our opinion, with the common-weal and interests of the country at large, to whose advantage it is to have their concerns entrusted to an able, zealous, and honest body of men. Whatever, therefore, raises the character of the profession of the law, advances the interests of the public at large; whatever lowers it, tends fully as much to prejudice the public by whom they are employed. These are the principles for which we have always contended, and we are satisfied they are sound and just.

Let us now endeavour to see what effect the most probable change in the ministry will have on the profession at large—we mean the advent of Sir Robert Peel to power. Individuals will be gainers, and individuals will be losers; but how will it affect the mass, who will be neither the one

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nor the other? Will any change be effected injurious to the profession? Will they be allowed to continue as they are? or will the changes, if any, be beneficial?

In the first place, we think it quite certain that changes, and great changes, there will be; but on the whole, we think favorably of them. We will briefly glance at what we think will be done.

CHANCERY REFORM will be immediately proceeded with. The Conservatives are pledged to renew the Administration of Justice Bill the first thing next session, and we conceive it will pass before Michaelmas Term next; but, more than this, the alterations in the practice and pleadings, which the profession are so anxiously expecting, have been made with the cognizance and assistance of, at least, two eminent Conservative lawyers at the bar, both of whom are already in the new Parliament. We believe that, under their sanction, if the orders are not issued by Lord *Cottenham*, they will be adopted by the new Lord Chancellor, be he who he may; and that, therefore, Chancery Reform will not be impeded. Nay, if the two great parties are thus brought to bid against each other, more, and not less, may be got.

Next, as to LOCAL COURTS. This is a subject as to which more doubt exists in the profession. The feeling is a good deal divided, but we understand that Sir Robert Peel will propose to establish them. If we have not been mis-informed, a bill was in preparation by his direction in 1835. The profession must be prepared for this. We can only say we withhold any further opinion until we see the measure that is proposed.

REGISTRATION OF VOTERS.—Here, also, we shall have a bill; for Sir James Graham

has repeatedly expressed his dissatisfaction at the present mode of revision, and we will venture to predict its speedy abolition.

The CONSOLIDATION of the STATUTE AND COMMON LAW. This will be a later measure than any other we have mentioned, but we have no doubt it will eventually be carried. Sir Robert Peel has always avowed himself in favour of the consolidation of the statute law; and in his celebrated speech on the criminal law in 1825, he quoted with great approbation, and at great length, the suggestions of Lord Bacon as to the consolidation of the common law, which we lately^a brought under the notice of our readers. We believe he will act on them.

The ENFRANCHISEMENT of COPYHOLDS. We have seen with what difficulty the measure of the last session for the Enfranchisement of Copyholds, 4 & 5 Vic. c. 35, has been wrung from the lords of manors. But Sir Robert Peel goes much further. He was a member of the committee of 1838, and although the report^b of the committee was drawn by Mr. James Stewart, yet the resolutions on which it was founded, were, if we have not been misinformed, sanctioned, if not actually written, by Sir Robert Peel. We are quite satisfied therefore that he will be willing to render the measure compulsory on the lords, especially if the working of the present bill should prove this to be necessary.

These, then, are some of the measures which we may expect. If indeed, any of our readers thought that Sir Robert Peel's advent to power would prevent a further reform of the law, they will find themselves mistaken. Let us then be watchful, ready to assist all proper reforms, but not to take them without proper examination.

THE PROPERTY LAWYER.

EFFECT OF CODICIL ON WILL.

By statute 1 Vict. c. 26, s. 24, every will shall be construed with reference to the real and personal estate comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention shall appear by the will. This is the law affecting wills executed after the 1st of January, 1838 (s. 36); but as to a will executed before that period, a very different rule obtains. In such, so far as real estate is concerned, a

will will only pass lands in the possession of the testator at the time of making the will, except by means of the doctrine of election; *Churchman v. Ireland*, 1 Russ. & M. 350; but some question has arisen whether lands purchased after the date of a will would not pass by a codicil made subsequently to their purchase; and this has been held to be so when the codicil contained no expressions limiting the effect of the devise to lands comprised in the will. Where the codicil merely refers to the lands mentioned in the original will, after-purchased lands will not pass. *Bowes v. Bowes*, 2 Bos. & P. 500. So in *Montpeary v. Bristow*, 2 Russ. & M. 117, it was held that where a codicil disposes solely of the property previously devised by the will, it has not the effect of republishing the will, so as to carry after-purchased property; notwithstanding a more general intention indicated in a recital. But where the codicil does not negative the construction, that if the after-purchased lands were intended to pass, they will be held to pass. Thus in *Hulme v. Heygate*, 1 Mer. 285, the codicil specified some of the after-purchased estates, yet it was held to amount to a republication of the will as to all. In *Goodtitle v. Meredith*, 2 Maule & Sel. 5, it was said that the codicil has an operation *per se*, except that it is repelled by a contrary intention appearing. See also *Rowley v. Eytton*, 2 Mer. 128. Of course, when there is a contrary intention expressed in the codicil, the after-purchased lands will not pass. *Strathmore v. Bowes*, 7 T. R. 482; *Bowes v. Bowes*, 2 Bos. & P. 500; *Smith v. Dearnier*, 3 Y. & J. 278. The latest case on this subject recognizes these principles, and the law is laid down by the Lord Chief Baron with his accustomed clearness and elegance. We extract the conclusion of the judgment:—

"It is admitted on general principles, that the republication of the will transfers the date of the will to the date of the republication; and if the codicil forms part of the will,—if the testator declares it to be so—it must be incorporated within the will; and there is nothing to shew that the lands are not properly described. The description in the will, will suit the newly purchased lands, namely, 'lands at Hendon and Finchley;' and all that the codicil says about those lands is, that the testator gives his son, when in possession of them, power to charge them. The effect of this, I apprehend, is to give him power over all the lands, the new as well as the old. It was doubted in argument whether the power was not limited to the lands devised by the will. I should think, however, that it applied to both. Suppose the will had been dated at the time the codicil was dated, it would devise

^a See 21 L. O. 193.

^b See 11 L. O. 435.

all the testator's estates at Finchley and Hendon, and that would comprise the newly-purchased land. Upon the whole, therefore, I think there are sufficient words to pass the newly-purchased lands, and the will must be taken to be dated at the date of the codicil, and after the newly-purchased lands were acquired, and consequently, that the whole pass by the will and codicil." Demurrer overruled. *Yarnold v. Wallis*, 3 Y. & C. 160.

THE COPYHOLD ENFRANCHISEMENT ACT.

WE have already given this act at length, and we shall continue to give all the information that we can collect, with respect to operations under it; and for this purpose we shall, from time to time, insert the forms issued by the commissioners. In the mean time we have been favoured with some of the sheets of a work, on the eve of publication, by Mr. Rolla Rouse, on "*Commutation and Copyhold Enfranchisement Practice*" under the act. We shall return to this work when it is published; in the mean time we cannot do our readers a better service in this matter than putting them in possession of Mr. Rouse's observations on "*Practice in Commutations at meetings called by lords of manors and tenants.*"

"Division 2.—Practice in Commutations at meetings called by Lords of Manors.

"Where a lord is desirous to effect a general commutation (but which will most frequently be an injudicious step on his part, for the reasons given in the suggestions to lords of manors, in Part 4), the following will be the practice on his part.

"In the first place he will prepare a notice of meeting, the form of which he will obtain from the commissioners. This notice, when signed, must, twenty-one days before the day appointed for the meeting, be affixed on the principal outer door of the church, within the limits of which the manor or greater part thereof in value extends, or on the door or some conspicuous part of a house or building, wherein the courts are usually held; and twice, within such twenty-one days, inserted in a newspaper (or once in each of two newspapers published in successive weeks) generally circulated in the county. See sect. 13.

"A copy of the notice, with a memorandum of the placing on the door, and copies of the papers, should be retained, and another copy sent to the commissioners, and in all communications to them the postage should be paid.

"It would also be advisable by a circular to request the attendance of the tenants.

"Before the meeting, a calculation should be made of the amount of rent-charge which the lord will require (as to making which, see Suggestions to Lords, Part 4, Division 1), and a statement made out to be submitted to the meeting.

"The steward's schedule of the tenants, with the lands and respective annual values, should also be made out, agreeably with Form 9, or such other form as the commissioners may require to be used, so as to show that a sufficient proportion of the tenants concur in the agreement.

"Should the tenants be numerous, it is not probable that a sufficient number will attend the meeting, to enter into a final agreement, consequently, in most cases, preparation should be made for entering into a provisional agreement, under sect. 16 of the act.

"The form of agreement will be obtained on application to the commissioners, and the agreement being prepared, the execution by the lord and tenants will be obtained; and when a sufficient number and value of the latter have executed, the agreement should be sent to the commissioners for confirmation.

"Should the agreement have been executed by the sufficient number and value at the meeting, valuers may be appointed according to sect. 24; but if not so executed, a meeting should be called under that section, as soon as practicable after the confirmation of the agreement; and of which meeting notice must be given as of the original meeting.

"The commutation will then be in the hands of the valuers, and immediately on their schedule being deposited with the steward for inspection, the lord should have it closely looked into, especially as to the exercise of the very extensive powers given to the valuers under the act, in the consideration of the particular circumstances of each case.

"Assuming that anything objectionable appears in the valuers' schedule, the lord must, at least ten days before the day fixed for the meeting to hear objections to the schedule, leave a notice of objection at the office of the commissioners (see sect. 29), and of which notice a form can be obtained from the commissioners.

"The lord will then have the objections submitted to the assistant commissioner at the meeting, and will also submit to the assistant commissioner an account of the expenses which the lord has incurred, if he intends to avail himself of the provisions of the act as to the charging of the costs on the manor. (See sect. 69.) The lord should also attend and meet such objections to the schedule as may be made by tenants.

"When the commissioners' schedule of apportionment is complete and deposited with the steward for inspection, the lord will have it inspected, and should any errors appear, point out those errors agreeably with the provisions in sect. 32.

"Should notice have been given to remainders or other parties under sect. 34, the lord must of course furnish those parties with the requisite explanations, and obtain their consents.

"Where the lord has appointed an attorney under sect. 12, and wishes to revoke such appointment, see Part 6, No. 2.

"After the commutation, should the rent charge be in arrear for twenty-one days, the lord will give a notice of intention to distrain (see Part 6, No. 10.) and in default of payment, agreeably with the notice, distrain, and proceed under sect. 47; and where the rent-charge shall be in arrear for forty days, and no distress on the premises, the course to be pursued is pointed out by sect. 48.

Division 3.—Practice in Commutations at meetings called by the Tenants.

"In the first place, provision should be made by a subscription amongst the tenants for the expenses to be incurred in calling the meeting, as no step beyond the appointment of chairman can take place till the steward's statement of the tenants, the amount at which assessed, &c. is prepared, and the expense of which must, from the extent of the inquiries to be made in order to prepare it, be rather heavy. Independently of this expense, unless amongst the tenants there are some men well acquainted with general business, and tolerably conversant with life valuations, they must employ a competent agent to estimate the amounts of rent charge which should be offered to the lord. The difficulties in the way of inducing a large body of men to act in unison, added to the uncertainty in the amount of individual liability from the great discretionary powers given to valuers, and the necessarily heavy expense attendant on the valuation and apportionments, will, unless the writer is much mistaken, prevent general commutations, except under very special circumstances, whilst separate commutations will, from the great advantages they hold out to both lords and tenants, be generally adopted.

"Where it is intended to effect a general commutation, a notice, of which a form may be obtained from the commissioners, must be signed by ten of the tenants, if there be so many, and if not, then by half the tenants, and when signed, must be placed on the church door or on the building where the courts are held, twenty-one days before the day fixed for the meeting, and advertised twice, as mentioned in sect. 13. A duplicate of this notice should be sent to the commissioners, and another, with the papers containing the advertisements, should be kept for production at the meeting.

"Before the meeting, the tenants should have a calculation made of the amount of rent-charge to be offered to the lord, and it would be desirable to have such calculation made by a committee of three, or a still better plan would be to have the calculation made by one person in the first instance, and then submitted to a committee. The suggestions to tenants, (Part 4, Division 3) will be found useful in this step of the proceedings. The rules and tables given in Part 7, and with the writer's "*Remarks on Copyhold Enfranchisement*," will enable the committee to make the requisite calculations of the rent-charge without much difficulty, and, after a little practice, with considerable quickness, which, from the number

of computations in calculating the entire rent-charge, will be of importance.

"At the meeting, after the appointment of the chairman, and account taken of the value represented by the parties present personally, or by attorney, at the meeting (see sect. 13, 16, and 17), the discussion will take place as to the amount of rent-charge to be paid, and whether to be subject to alteration in amount or not. In case of difference between the lord and the tenants, as to the amount of rent-charge, the meeting will be adjourned (see sect. 18), so as to attentively consider the matter. The form of notice of adjournment can be obtained from the commissioners, and the notice must be published as directed in sect. 18.

"Previously to the adjourned meeting, the tenants or committee should meet, and decide on the acceptance or refusal of the terms required by the lord, or the points to be urged to induce the acceptance by the lord of their terms, or the extent of increase to be agreed on, in the event of the lord refusing to accept their terms.

"Should the tenants refuse the terms offered by the lord, and determine to make no advance in the amount of rent-charge offered by them, the matter will of course drop, but if it is to be the subject of further treaty, with a fair prospect of adjustment, the attention of the committee should be turned to the appointment of valuers, so as to be prepared to make the appointment without a further adjournment of the meeting. The mode of appointing the valuers is stated in sect. 24.

"In most cases, however, the attendance at the meeting will not be sufficiently numerous to enable the making a final agreement, and consequently the general course will be to make a provisional agreement, under sect. 16, and to have it executed by the due proportion of tenants, within six months, as pointed out by that section.

"Where a provisional agreement only is entered into, the proper course to be adopted with respect to appointment of valuers, is to defer the appointment till after confirmation of the agreement by the commissioners.

"The commissioners are directed by the act to prepare the forms of agreement, and from them the forms should be obtained before the meeting.

"Shortly after the meeting, should the agreement be then executed by parties interested to a sufficient value (see sect. 13,) or when so executed in the case of a provisional agreement, the agreement should be sent to the commissioners for confirmation.

"When the agreement is confirmed by the commissioners, a meeting should be called for appointment of valuers, under sect. 24, if (as to a final agreement) such appointment has not been previously made.

"When the valuers have prepared their schedule, and it is left with the steward for inspection, agreeably with the provisions of sect. 29, each tenant should take an opportunity of inspecting it, and those who are dissatisfied

should obtain from the steward one of the notices of objection to be provided under that section, and sign and deliver it to the steward, or leave it for him at the place where the schedule is deposited, at least ten days before the meeting.

"The committee or agent of the tenants should also learn by application to the commissioners, eight or nine days before the meeting, whether the lord has delivered to them any notice of objection, on his part, to the schedule, in order that preparation may be made for meeting his objections.

"The committee or agent of the tenants should also attend the meeting, to support the schedule against objections made by any tenants, which may affect the interests of the other tenants.

"When the commissioners' schedule of apportionment is prepared, and deposited with the steward for inspection, the committee or agent should carefully inspect it, and give notice of any errors appearing, that such errors may be rectified under sect. 32.

"As to commutations at first, such commutations can scarcely be effected except under separate contracts, but in cases where it might be otherwise the practice would be the same as before stated, where the commutation takes place at a rent charge."

CHANGES IN THE LAW.

IN THE LAST SESSION OF PARLIAMENT.

No. VIII.

STAMPS ON LAW PROCEEDINGS.

4 & 5 Vict. c. 34.

An Act to explain and amend an Act of the fifth year of King George the Fourth, for repealing certain duties on law proceedings in the Courts in Great Britain and Ireland respectively, and for better protecting the duties payable upon stamped vellum, parchment, or paper.

[21st June, 1841.]

55 G. 3, c. 184. 5 G. 4. c. 41. *Repenting provision in recited act as to stamp duty upon certain affidavits.*—Whereas by an act passed in the fifty-fifth year of his late majesty King George the Third, intituled "An Act for repealing the stamp duties on deeds, law proceedings, and other written or printed instruments, and the duties on fire insurances, and on legacies, and successions to personal estate upon intestacies, now payable in Great Britain; and for granting other duties in lieu thereof," a stamp duty of two shillings and sixpence was imposed (amongst others) upon affidavits to be filed, read, or used in any of the Courts of Law or Equity at Westminster, or of the Great Sessions in Wales, or of the counties palatine of Chester, Lancaster, and Durham, or before any Judge or Master or other officer of any of the said Courts, or before the Lord High Chancellor, or the Lord Keeper or Commissioners of the Great Seal, sitting in matters of bankruptcy or lunacy: and whereas by an act passed in the fifth year of the reign of his late

majesty King George the Fourth, intituled "An Act to repeal certain duties on law proceedings in the Courts in Great Britain and Ireland respectively; and for better protecting the duties payable upon stamped vellum, parchment, or paper," it was (amongst other things) enacted, that from and after the tenth day of October one thousand eight hundred and twenty-four the stamp duty payable upon, for, and in respect of affidavits to be filed, read, or used in any action or suit in any of the said Courts of Law or Equity at Westminster, or of the Great Sessions in Wales, or of the counties palatine of Chester, Lancaster, and Durham, or before any Judge or Master or other officer of any of the said Courts, or before the Lord High Chancellor, or the Lord Keeper or Commissioners of the Great Seal, sitting in matters of bankruptcy or lunacy, should cease and determine: and whereas doubts have been entertained whether under the last-mentioned statute the stamp duty of two shillings and sixpence imposed upon affidavits by and under the said first-recited act was repealed, and had ceased and determined, in regard to all affidavits whatsoever to be filed, read or used in the said Courts, or before the Judges, Commissioners, or officer therein mentioned, or only in regard to affidavits to be filed and used in any action or suit; and whereas it is expedient and necessary that such doubts should be forthwith put an end to and determined; be it therefore enacted and declared by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that from and after the passing of this act the said stamp duty of two shillings and sixpence under and by virtue of the said first recited act imposed upon affidavits to be filed, read, or used in any of the said Courts, or before the Judges, Commissioners of the Great Seal, or officers of the said Courts, or any of them, shall be adjudged, deemed, and taken to have been repealed, and to have ceased, determined; and been put an end to, from the time of the passing of the said second recited act, upon all affidavits whatsoever, whether to be read, filed or used in the said Courts, or before the said Judges, Commissioners, or officers, in any action or suit, or otherwise howsoever; and that all affidavits which shall or may have been read, filed, or used since the passing of the second recited act, in the said courts, or before any judge or commissioner, or officer as aforesaid, without being stamped according to the provisions of the said first recited act, shall be adjudged, deemed, held, and taken to have been lawfully and rightfully read, filed, and used, to all intents and purposes whatsoever, and as if no stamp duty had ever been imposed on such affidavits by the first recited act, or any other act or statute whatsoever.

2. *Nothing in 5 G. 4, c. 41; or this act contained to repeal 55 G. 3, c. 184, imposing a stamp duty upon other affidavits.*—Provided always and it is hereby enacted and declared, that nothing in the said act passed in the third year of

the reign of King George the Fourth or in this act contained, shall be held, deemed, taken, or construed to repeal any part of the said act passed in the fifty fifth year of the reign of King George the Third, which imposes a stamp duty upon affidavits, other than and except affidavits to be filed, read, and used in the said Courts, and before the said judges, commissioners, and officers herein particularly mentioned and declared.

The affidavits relating to the execution and service under articles of clerkship, the payment of the duty, the service of notices prior to admission, &c., need not, in future, be stamped. So affidavits used in applications to the Court relating to attorneys, and, in short, all affidavits filed or used in courts, or before the judges, commissioners, or officers, are now exempt from duty, whether in an action or suit, or not.

NOTICES OF NEW BOOKS.

The Attorney's and Solicitor's New Pocket Book, and Conveyancer's Assistant: containing the most common and approved Precedents, with many Practical Remarks. To which is subjoined, a Treatise on the Nature of Estates in General, and the Qualities and Effects of different Legal Instruments. By F. C. Jones, Esq., of Gray's Inn. *The Seventh Edition, with some New and Useful Precedents, adapted to the present State of the Law and the Practice of Conveyancing.* By John Crisp, Esq., of Gray's Inn. In 2 vols. London: A. Maxwell, 1841.

It appears that Mr. Crisp, the editor of this, the seventh edition of the Attorney's Pocket Book, assisted Mr. Jones, the original author of the work, on its first appearance in the year 1794. Numerous editions have been published by different persons since that time, and Mr. Crisp puts forward the present publication as the only one since the Act for abolishing Fines and Recoveries. That act, he says, has occasioned new, and as yet untried, forms of assurance, but in applying the new law recourse must often be had to the learning of the abolished forms; for, as Sir Edward Coke says, "assuredly out of the old fields must spring and grow the new corn."

"Two hundred years since, Mr. Selden observed, that the law of England had received such great alteration, that in regard to its first being, it was like the ship, which, by often mending, had no piece of its first materials; and such being the case then, its identity is now made impossible, except by that sort of 'itinerary evidence, or rather conjecture,

which has been admitted as to lands of copyhold tenure, whereby 219 acres of land have been allowed to pass by the description of 67 acres, that being the original number appearing upon the court rolls; *Long v. Collier*, 4 Russ. 268. Since the abolition of fines and recoveries, conveyancing, instead of being simplified, has been rendered more perplexing than ever: that the substituted deed must be inrolled is quite clear; but as the nature of it is wholly left to conjecture,^a some old lawyers may still be disposed to agree with venerable West, that it is a far surer course to retain these certain forms which continually have been many years put in use (use), than to devise new; for time, which is the touchstone of all arts, hath confirmed these. Symb. 1st part, Introduction, sec. 57. But with the best forms, even if they were all sanctioned by judicial determination, lawyers must become teachers of themselves, and acquire a proper knowledge of the law, by making an impartial use of their own understandings in silence, unbroken meditations and thoughts, revised and corrected; for nothing can be more absurd than the common notion of instruction, (which extends to the law as well as every other science,) as if science were to be poured into the mind like water into a cistern, that passively waits to receive all that comes. Harris, Preface to *Hermes*. Men a long time live the life of sense before they use their reason, and till they have furnished their head with experiments and notices of many things, they cannot at all discourse of any thing; and when they come to use their reason, all their knowledge is nothing but remembrance;^b and we know by proportions, by similitudes and dissimilitudes, by relations and oppositions, by causes and effects, by comparing things with things; all which are nothing but operations of understanding upon the stock of former notices, of something we knew before, nothing but remembrances, all the heads of topics, which are the stock of all arguments and all sciences in the world, are a certain demonstration of this, and he is the wisest man who remembers most, joins those remembrances together, draws most lines from the same centre, and most discourses from the same notices. And in all these things (according to Lord Coke) consisted the absolute per-

^a In a note to one of the substituted forms by Mr. Jarman, its operation is placed not upon certainty, but probability. "It seems," he says, "highly probable that the courts would hold that a conveyance to uses by tenant in tail, by a deed inrolled under the statute 3 & 4 W. 4, cap. 74, preceded by a lease for a year, would take effect as a lease at common law, and not as a bargain and sale of a use, since the effect of construing it to operate as a bargain and sale would be to vest the legal inheritance in the grantee, and reduce the whole series of limitations in favour of the intended *cestuis que use* to mere equitable limitations." 9 Byth. Conv. 439, in note.

^b Jeremy Taylor, *Holy Dying*, 158.

section of Littleton in his knowledge of the law, he being well skilled in the art of logic, so necessary to make a complete lawyer (Prof. Co. Litt.). Every just consequence (says the learned and celebrated Wollaston,^c) is founded in some known truth, by virtue of which one thing follows from another, after the manner of steps in an algebraic operation; and if inferences are so founded, and just, the things inferred must be true, if they are made from true premises.

Of the labours of the present editor we may further speak from his preface:—

"In the recitals contained in the following pages, the words, 'bearing date on or about &c.' and 'made or expressed to be made &c.' have, notwithstanding the prejudice raised against them, been retained, because two learned writers have deemed them particularly appropriate, having discovered by their sagacity the latent wisdom contained in those words, which never would have been found out but for the censure of another learned writer, who deemed them absurd. The word *alien* used in the operative part of deeds, will sometimes be found in the following pages; for after undergoing the like scrutiny it has sustained the very high character of being the very word of words for absolutely parting with the whole of the estate, and Giles Jacob's Old Law Dictionary, title 'Alienation,' has been cited to prove it, and yet the very same word has been condemned by another learned writer as being altogether useless. A fair specimen is here given of modern legi-logical criticism upon our common assurances, which, according to Lord Coke, on account of their plainness and simplicity, should be expounded according to common allowance, without being pryed into with eagle's eyes.^d If it should unfortunately happen that those forms which have been sanctioned by the collective wisdom of ages, the language of which has a fixed and definite meaning, are made to give way to the private opinions of writers, however ingenious, the consequence will be universal ignorance and confusion,^e for every one would then become wiser than the law, and like that restless man who would never cease to whet, whet, and whet his knife till there was no steel left to make it useful. With respect to the tenses, 'hath granted, &c.' and 'by these presents doth grant, &c.,' they have also been retained; and in regard to the past tense, contrary to the general opinion of the profession, for according to the text writers the past tense should be discarded, and the present tense alone used, but after due consideration, perhaps, the propriety of using both tenses may be discovered, and if so, they will serve to prove that our conveyancing forefathers had more knowledge of metaphysics, as well as of law, than those who now accuse them of being ignorant, or

otherwise not the most shrewd, that is to say, something like *Master Slender* in the *Merry Wives of Windsor*."

As examples of Mr. Crisp's notes we give the following from an agreement for the sale of a freehold estate—

"When the Attorney's Pocket Book was first published, contracts or agreements were usually made under seal; but as the Statute of Frauds only requires signing, it has for a long time been established that sealing is not necessary. Under contracts or agreements an obligation arises on both sides, and they are the subject of both legal and equitable proceedings, by means of which the parties may involve each other in utter ruin. In the eye of the common law, executory agreements are looked upon as personal security, entitling the party injured, by breach thereof, to damages recoverable by an action of covenant if there be a deed, and if not, by an action for breach of contract, but as a trust forms one part of the jurisdiction of equity, that Court looks upon what is agreed to be done as actually performed,^f and the vendor as to the land is there considered as a trustee for the purchaser, and the purchaser as to the purchase money a trustee for the vendor; and if either party refuse to perform the contract, the other has the election of two remedies—he may either bring an action for damages, or file a bill for specific performance. But equity in making decrees for carrying contracts into execution in specie, is governed, not by an arbitrary discretion, but by fixed rules, and it is there established that *every agreement, to merit the interposition of a Court of Equity in its favour, must be fair, just, reasonable, bona fide, certain in all its parts, mutual, useful, made upon a good or valuable consideration, not merely voluntary, consistent with the general policy of a well regulated society, and free from fraud, circumvention, or surprise*; or at least such agreement must, in its effect, ultimately tend to produce a just end. If any of these ingredients are wanting, or that object be not in view, Courts of Equity will not decree a specific performance. Therefore, if there be any concealment of a circumstance disadvantageous to one party to an agreement, by the other, so as to lead the former into a misconception,

^f A vendor, according to an old proverb, needs but one eye, whilst a purchaser requires a thousand.

^g Upon this ground a purchaser was compelled to complete the purchase of houses which were swallowed up by the great earthquake which happened in Jamaica; 2 Pov. Contr. 61. In *Paine v. Meller*, 6 Ves. 349, the contract was enforced notwithstanding the destruction of all the buildings by fire; and a specific performance of a contract for sale of a life annuity was lately decreed, although the annuitant was dead at the time of the decree; *Kenney v. Wexham*, 6 Madd. 355.

^c Rel. Nat. 44.

^d 2 Rep. 74.

^e See 1 Ventr. 141; *politia legibus, non leges politia adaptantur*.

that, when suggested and proved, will be a solid objection to decree a performance in specie. *Pow. Cont.* 2 vol. 221.^h

"Mr. Huges in his *Concise Conveyancer*, p. 1, has given a general precedent of a contract for sale of a freehold estate containing the following stipulations, after referring to a schedule comprising the parcels. — 1. Price. 2. Valuation of timber. 3. Abstract and deduction of title. 4. Specification of incumbrances, land-tax, tithes, modus. 5. Acceptance of title as to part. 6. Commencement of title to other part. 7. No title to other part but vendor's conveyance. 8. Such title to other part as vendor has. 9. Derivation of title to other part from the crown; evidence of exemption from tithes; in case of non-exemption vendor to convey tithes or make an abatement. 10. Proof of modus. 11. Title under inclosure agreement. 12. Indiscriminate allotment on inclosure. 13. Allotment in lieu of open field lands, &c. generally. 14. Award to be evidence of seisin in fee. 15. Evidence of seisin where description is general. 16. Root of title. 17. Payment of legacies and mortgage debt, and reconveyance to be presumed. 18. Presumption as to surrender of terms. 19. Indemnity by bond against dower and annuity; indemnity against annuity by impounding part of purchase money. 20. Production of copies in lieu of originals; covenant to produce; defects in former covenants to produce. 21. Purchaser not to reject title as doubtful. 22. Recitals in deeds of a given age, evidence. 23. Representations to terms. 24. Attested copies, &c. 25. Journeys to inspect deeds. 26. Preparation and execution of conveyance, &c. 27. Vendor to vest the fee in himself or a trustee, or contribute to the expense of conveyance. 28. Deeds, &c. to be delivered or retained; [vendor to retain deeds and covenant to produce]; [covenant where trustees, &c. hold deeds]. 29. Covenants for title. 30. Periods fixed for delivery of abstract, &c.; option to avoid sale on breach of contract. 31. Vendor to clear outgoing, purchaser to pay for crops, &c. 32. If completion delayed, interest on purchase money—occupation rent for lands on hand. 33. Compensation for deficiency in quantity, &c. 34. Expense of valuations.' But after all, the learned gentleman's previous advice to both buyer and seller is not to enter into any written contract, as it is almost impossible to frame one so strictly as to insure its completion or abandonment within a reasonable time, but to negotiate upon a verbal understanding suggested by the dearly bought experience of numerous plaintiffs and defendants in suits both at law and in equity for the enforcing and resisting the performance of written contracts."

^h This principle is illustrated by a very apposite instance, namely, that of a female slave clothed in the dress of a man, and offered to be hired or sold in that character.

ANSWERS TO CONVEYANCING QUESTIONS.

To the Editor of the Legal Observer.

Sir,

ALLOW me to suggest to my fellow-students that the "trying flame" of this "ordeal" would be less formidable, and the probability of escaping "unscathed" be greatly increased, if some of those who have not passed were to give publicity to the answers they write in private, and thereby afford all an opportunity of testing the correctness of their answers. If the following replies to the questions on conveyancing proposed at the last examination, (*ante*, p. 104) should be worthy the distinction of a place in your valuable periodical, I hope you will give them an insertion *pro bono publico*.

1. An advowson is the right of presentation to a church or ecclesiastical benefice. 2 *Stew. Black.* 4, 1st. ed.
2. Borough English is a custom whereby some tenements held in burgage descend to the youngest son, and not to the eldest, on the death of the father. *Ib.* 26.
3. The difference between a rent-charge and a rent seek is, that on the creation of the former a clause of distress is added to the deed, while such clause is omitted on the creation of the latter. Rents-seek may, however, be distrained for by virtue of the statute 4 G. 2, c. 28. *Ib.* 20, 21.
4. If a person convey lands to another on condition as a security for money, and the condition be broken, he may, under certain circumstances, redeem the premises; and this privilege is denominated his equity of redemption. *Watk. Prin. of Conv. by White*, 222.
5. A chattel interest, provided it be not less than an estate for years, will support a vested remainder. A contingent remainder cannot be limited on any estate less than a freehold. *Ib.* 175.
6. In a deed if there be two clauses so totally repugnant to each other that they cannot stand together, the first shall be received and the latter rejected; wherein it differs from a will, for there, of two such repugnant clauses the latter shall stand. This difference is owing to the different natures of the two instruments; for the first deed and the last will are always most available in law. Again, it is a rule of construction with regard to wills that a devise be most favorably expounded, to pursue if possible the will of the devisor. And therefore many times the law dispenses with the want of words in devises that are absolutely necessary in all other instruments. Wills are regarded thus favourably, because they are often drawn up when the party is *inops consilii*, whereas deeds are presumed to be always made with great caution, forethought, and advice. 2 *Stew. Black.* 272.
7. Where there is a lease for a term of years certain, no notice is necessary to put an end to the tenancy, because both parties are

- aware of the period fixed for its determination. Chamber's Tenants' Law, 750.
8. The tenant holds under the covenants of the former lease as far as they are applicable to his present situation. *Ib.* 289.
 9. Where there is an exception of this description in the lessee's covenant to repair, it ought to be stipulated that the lessor shall repair in case the premises are damaged by fire, or the particular repairs require to be done; for the exception, of itself, will not bind the lessor to repair. *Ib.* 406.
 10. Copyhold lands are transferred by surrender, presentment, and admittance. 2 Stew. Black. 257—264.
 11. A feoffment may be defined to be the conveyance of corporeal hereditaments from one person to another, by delivery of the possession of the hereditaments conveyed, and evidenced by an instrument in writing. But in order to perfect a feoffment, it is absolutely necessary that livery of seisin be given to the feoffee, for unless this be done, he will have but an estate at will. *Ib.* 211—212.
 12. The reading of a deed is necessary when any of the parties require it; and if it be not done at his desire, the deed will be void as to him. *Ib.* 206.
 13. An heir apparent is one whose right of inheritance is indefeasible, provided he outlives the ancestor. An heir presumptive is one, who, if the ancestor should die immediately, would in the present circumstances of things be his heir: but whose right of inheritance may be defeated by the contingency of some nearer heir being born. *Ib.* 136.
 14. Succession *per stirpes* is where persons take by right of representation, and not in their own right: succession *per capita*, where they take in their own right, and not by right of representation. *Ib.* 139—140.
 15. A vested legacy is one which the testator intends the legatee shall have at all events, and one, the property in which vests in the legatee on the death of the testator. A contingent legacy is one which becomes payable on the happening of an uncertain event, and which, if the legatee die pending the contingency, cannot be recovered by his personal representatives. LECTOR.

LAW OF ATTORNEYS.

TAXATION.—JURISDICTION.

WHERE an action was brought against an attorney, and he pleaded a set-off of his bill for business done solely in a Court of Equity, the Court will not direct his bill to be taxed. This point, which is somewhat new, arose on the following case.

A rule *nisi* had been obtained, calling on an attorney to shew cause why the bills of costs mentioned in his particular of set off, should not be taxed. It was an action of assumpsit, to which the defendant, an attorney and solicitor, pleaded part payment into Court; and a set-off of his costs for business in equity. There was no item for any matter transacted out of

the Court of Equity. Mr. Peacock submitted that the Court had no jurisdiction to direct such a bill to be taxed, and he cited *Clutterbuck v. Combes*, 5 B. & Ad. 400; 2 Nev. & Man. 209; and *Ex parte King*, 3 Nev. & Man. 437.

On the other side, Mr. Crompton referred to the case of *Williams v. Griffith*, 8 Dowl. P. C. 414. The case of *Weymouth v. Knipe*, 5 Dowl. P. C. 495, was also cited.

Coleridge, J.—This was a rule to refer bills of costs, which the defendant, an attorney, had set off against the plaintiff's demand, to taxation; it was admitted that these bills contained no item of business done in this or any other law court, but were composed entirely of charges for business done in courts of equity. It was not contended that I could have sent this bill for taxation, if no action had been brought, for the case is not within the words of the statute, and it is now settled that the Courts have not any general common law jurisdiction to order the taxation of an attorney's bill; but it was said, the existence of the action, and the attorney's setting the bill off in the action, which was the same as if he was suing upon it, gave the Court jurisdiction. I am, however, of a contrary opinion; it appears to me, that no business having been done in this Court, and the bill containing no taxable item at law, it is the same in principle as if the bill had been wholly for conveyancing, or wholly for work done before a committee of the House of Commons, or any other untaxable matter. When a bill contains even a single item for business done in the Court, it has become the inveterate practice, not very reconcileable with the language of the statute, to refer it for taxation throughout to the officer of our Court, though the residue of the work charged for may have been done in other courts of common law, or in Chancery, and our officer then procures the assistance of the officers of other Courts for the taxation, the whole taxation being, however, still to be considered as his. But in the present case there was nothing on which the jurisdiction can attach. I agree that there is no distinction in this respect between suing on the bill and setting it off: in both cases I apprehend the remedy is by an application to the Court of Equity in which the business was done. The rule, therefore, will be discharged. *Slater v. Brookes*, 9 Dowl. P. C. 349.

The Court of Queen's Bench will not direct the bill of an attorney for business done in Bankruptcy to be taxed by its own officer.

Martin applied for a rule to shew cause why an attorney should not deliver up certain books, papers, &c., to the assignee of a bankrupt; and why he should not deliver his bill of costs; and why that should not be referred to the officer of this Court for taxation. The assignees had employed the attorney in question in certain matters of bankruptcy, but he had subsequently ceased to act for them. The documents in question remained in his hands, and he had refused to deliver them up. No

doubt, the Court would compel him, as one of its officers, to give up those documents and deliver his bill. With respect, however, to the taxation of that bill, it was doubtful whether this Court could grant that part of the application. The effect of 6 Geo. 4, c. 16, s. 14, was, that the officers of the Court of Bankruptcy should determine the amount of the solicitors' charges, with respect to matters in bankruptcy, though as to charges respecting any actions at law or suits in equity the amount must be settled by the proper officer of the Court in which the business had been transacted.

Patteson, J.—I think that, with respect to the taxation of the bill, you must apply to the Bankruptcy Court, as this Court does not interfere with matters of this description in another Court. The remainder of the rule may be granted.

Rule granted accordingly.—*In re Hawker*, 9 Dowl. P. C. 189.

THE STUDENT'S CORNER.

ADVANCES.

IN reply to the case stated by "R. C. B." in "the Student's Corner," I beg to refer to Burton's Compendium, where, at p. 463, n. there is the following statement:—"As to the nature of the settlement, or advancement of a portion intended by the statute, see *Edwards v. Freeman*, 2 P. Williams, 435; 1 Eq. Cas. Ab. 149, and 3 P. Wms. 317, note. W. S. S.

POWER OF ASSIGNEES.

In December, 1831, A. B. became a bankrupt, and on the 21st of January following C. and D. were chosen assignees of his estate and effects. In April, 1833, without the concurrence of the official assignee, (it being a town bankruptcy,) they conveyed to F. in fee the equity of redemption of certain premises, part of the bankrupt's estate. The estate is now wished to be dealt with; but it is thought that the conveyance, being without the concurrence of the official assignee, was not an effectual conveyance. Is the official assignee's concurrence in the arrangements about to take place essential or advisable? S.

RENT RESERVED PAYABLE IN ADVANCE.

In answer to an enquiry p. 106, *ante*, respecting the legality of reserving rent to be paid in advance, it may be said that there can be no doubt of the legality of such a reservation. *Holland v. Palser*, 2 Stark. 161, is an express decision on the point. A reservation of this nature is sometimes, and ought always, to be made, where the term is for an uneven period of time: as for twenty-one years, less ten days. If, in this case, there be the usual reservation of rent, payable quarterly, or half yearly, a question would arise whether any rent would be payable for the last quarter or half year, wanting ten days of the term.

A reservation of rent, payable in advance, gives the lessor the right of distress for the last

payment of rent during the term: In ordinary cases, he is left to his remedy on the covenant for the rent due at the expiration of the term. O—s.

SEARCH FOR JUDGMENTS.

By 1 & 2 Vic. c. 110, s. 13, it is enacted that a judgment already entered up, or to be hereafter entered up, against any person in any of her Majesty's Superior Courts at Westminster, shall operate as a charge upon all lands, tenements, rectories, advowsons, tithes, rents, and hereditaments (including lands and hereditaments of copyhold or customary tenure), of or to which such person shall, at the time of entering up such judgment, or at any time afterwards, be seised, possessed, or entitled for any estate or interest whatever, at law or in equity, whether in possession, reversion, remainder or expectancy, or over which such person shall, at the time of entering up such judgment, or any time afterwards, have any disposing power which he might, without the assent of any other person, exercise for his own benefit.

Does this enactment apply to leasehold property, so as to render a search for judgments necessary on the purchase of such property? Has this question any bearing upon W. L. R.'s query, p. 139, L. O. vol. xxi.

SELECTIONS FROM CORRESPONDENCE.

SEPARATE USE OF MARRIED WOMAN.

It appears very desirable that the attention of the profession should be particularly drawn to the principle upon which the Lord Chancellor decided the case of *Tullett v. Armstrong*, as declared by himself in *Newlands v. Pugsley*, 4 Myln. & Cr. 417; viz. "that a person marrying a woman so circumstanced is considered as adopting the property in the state in which he finds it, and bound by equity not to disturb it."

This reduces the question to a matter of contract, and relieves it from the anomaly in which it would appear to be involved, if the solution is to depend simply on the force of the words creating the trust for separate use.

Having insisted upon the necessity of a contract, in the few observations which were inserted in Vol. 19, p. 408, it is certainly satisfactory to find that his Lordship decided the point upon that ground. M. W.

PRACTICE.—PLAINTIFF'S RESIDENCE.

To the Editor of the *Legal Observer*.

Sir,

As it is part of your province to notice and comment upon defects in the practice of the courts, I make no apology for troubling you with the following case. My client *B.*, an indorser, is sued by *A.*, the alleged indorsee of a bill. *B.* is totally unacquainted with the existence of such a person as *A.*, nor can he by ordinary diligence find out who he

is, what is his profession or business, or where he lives. At the commencement of the action, I applied by letter to A.'s attorney for the required information, but the letter was unattended to and in no way noticed. A. has since carried on his proceedings very tardily, and no further attempt was made to ascertain who and what he is; but recently, notice of trial having been given, it became of some importance to obtain the information. A summons for the purpose was therefore served on A.'s attorney, and on the hearing of it, an affidavit in support made by B., stating his ignorance of and inability to obtain the information sought, was produced and read. The judge dismissed the application on the ground that it was made too late. The plaintiff's attorney, singularly enough, withholds the information sought.

Supposing that this decision was according to practice, is it not manifestly unjust that such a rule of practice should prevail? For what possible harm can result to a plaintiff by being called upon at any stage of a cause to tell who and what he is, and where he lives? The yielding of such information can never injure a suitor, if he be acting honestly and do not intend deception. There is no doubt that a rule not to admit of many applications after certain stages in a cause, is a very proper one, and a relaxation of the rule in some instances would be very prejudicial to a suitor. But what possible mischief could happen to a plaintiff by being required to disclose that, which every man who has not a bad motive for concealment, would voluntarily disclose, and which a defendant has a clear undoubted right, which no time ought to operate against, to have disclosed.

This is an injustice in practice, which ought to be removed, by making it imperative on a plaintiff's attorney to give the address and description of his client, on request, at any stage of the proceedings in an action.

For want of these particulars my client B. is likely to suffer injury, and there appears to be no redress.

A CONSTANT READER.

ABOLITION OF LEASE FOR A YEAR.
To the Editor of the Legal Observer.

Sir,

I beg leave to make the following suggestion to those members of the profession who intend availing themselves of the act lately passed for dispensing with the necessity of leases for a year, "it being expedient," (so saith the act) "to lessen the expense of conveying freehold estates," an object strangely enough attained, by leaving the stamp still chargeable on the release. The method of inserting in the release the required notice of the act, I propose to be in the granting part thus:—"He the said A. B., *hath &c., and by these presents, made and executed in pursuance of an act &c.,* (reciting the title of the act), *doth, &c.*"

In the belief that few will avail themselves of a reform so unsatisfactory to both attorney and client,
One, &c.

Another correspondent suggests the propriety of introducing in the operative part of the release the following clause, which he conceives will give the best effect to the release, and ensure its operation in all respects, both at law and in equity, as if the releasing parties had executed a lease for a year:—

In the actual possession of the said A. B. now being, by virtue of these presents, made in pursuance of an act of parliament, passed in the fourth year of the reign of her present majesty, intituled "An Act for rendering a Release as effectual for the conveyance of Freehold Estates as a Lease and Release by the same parties."

Y. N. N.

TITHE COMMUTATION COSTS.—P. 106.

Where there is no provision to the contrary, there is no doubt that the *solicitor* for the commutation, and not the *surveyor*, is entitled to the costs of preparing the engrossments of the three copies of the apportionment for deposit in the Bishop's Registry, parish chest, and Tithe Office. A common charge is 5s. a skin, exclusive of the parchment. A.

FURTHER ADMISSIONS, Michaelmas Term, 1841.

COMMON PLEAS.

Clerk's Name and Residence.

Shuter, John David, 67, Millbank Street.

To whom articulated, assigned, &c.

David Shuter, 67, Millbank Street.

QUEEN'S BENCH.

Added to the List pursuant to Judge's Order.

Auber, Henry Peter, Fenchurch Street.

Howell, Abraham, Welchpool.

Horner, Francis, Liverpool.

Teesdale, John Marmaduke, Fenchurch Street.

James Weston, Fenchurch Street.

Joseph Jones, Welchpool.

Henry H. Statham, Liverpool.

John Teesdale, Fenchurch Street.

SUPERIOR COURTS.

Lord Chancellor's Court.

IN LUNACY.—LUNATIC'S WIFE.

In the execution of a commission of lunacy, the lunatic's wife, although she admits his unsoundness of mind, will be allowed to attend effectually by her counsel, with a view to fix the period from which the unsoundness commenced; but it will depend on the return to the writ whether her costs will be allowed.

Mr. Girdlestone and Mr. Bush supported a petition on behalf of Mrs. Parkinson, the wife of the person into whose soundness of mind a commission had been issued, to be executed at Norwich in the course of next month. Mrs. Parkinson allowed that her husband was insane. The prayer of the petition was, that Mrs. Parkinson might be permitted to attend by counsel at the execution of the commission, for the protection of her interests, and that the commission might be postponed till the 2d of August, in order that she might have the benefit of counsel after the Norwich assizes. They mentioned a case in Mr. Shelford's Treatise on Lunatics, *In re Clement*,* in which a wife was allowed to attend by counsel at the execution of the commission.

Mr. Whitmarsh, *contra*, did not dispute the wife's right to attend, but observed that there was no reason to postpone the commission.

The Lord Chancellor granted the prayer of the petition in both points; but he desired it not to be understood that in giving his sanction to the petitioner's attending by counsel, her costs would be allowed. That matter would depend on the return to the writ.

In re Parkinson, Ex parte Mrs. Parkinson, June 28th, 1841.

Vice Chancellor's Court.

LEGATEES, CLAIMS OF, TO REAL ESTATE IN THE HANDS OF A PURCHASER.—PRACTICE.—PARTIES.—SUPPLEMENTAL BILL.—RECEIVER.

Where several estates, devised subject to the payment of certain legacies, have been sold, and the purchases of all, except one, have been completed, that one is primarily liable to the payment of such of the legacies as remain unsatisfied, and the purchase money for it must be exhausted before any claim can be made on the other purchasers.

If the bill state that there were other estates, devised, and charge that they were also liable to the legacies, and the Master's report, made in pursuance of the decree on the hearing, find that there were such other estates, the Court will, on an objection being taken for want of parties, order the purchasers of them to be brought before the Court by supplemental bill; but it is not necessary to make the original defendants parties to such bill.

An order will be made at the hearing for a receiver, although the bill does not pray that a receiver may be appointed.

The bill in this case was filed by certain legatees and other persons beneficially interested in the estate of the testator named in the pleadings, and it prayed that the usual accounts of his estate might be taken, and that the estate might be administered and the debts and legacies paid. The testator devised the estate in question subject to debts and legacies. A decree was made and a reference ordered to the Master to take the accounts, who by his report certified that several of the testator's estates had been sold and the purchases completed, but that the purchase of one which had been sold to the defendant Holden, was not yet completed. On these facts being stated to the Chancellor when the cause was heard on further directions, and an objection being taken for want of parties his lordship ordered the cause to stand over, with liberty to the plaintiffs to file a supplemental bill. The plaintiff's accordingly filed such supplemental bill, to which they made the other purchasers defendants, but did not make the defendant Holden a party to it; and the original and supplemental bill now came on for hearing.

K. Bruce and Whitmarsh, *senr.* and *junnr.*, for the plaintiffs, contended, that although it might not be necessary to enforce their claims against the defendants to the supplemental bill who had completed their purchases, yet that unless the defendants to the original suit who had not yet completed would undertake to satisfy their demands, they were entitled to keep all parties who were possessed of any part of the testator's estate before the Court. With regard to any of the defendants to the supplemental bill whom the plaintiffs had supposed to be interested, but who proved not to be in the situation of accounting parties, the bill must be dismissed as against them at the expence of the plaintiff.

Richards, Chandless, and Bacon for several of the defendants who had completed their purchases, insisted that no claim could be made against their clients, inasmuch as the greater part of their respective purchase monies had been applied in satisfaction of incumbrances upon the estates. But even if that had not been the case, the last estate sold must be liable in a contract like this, (Sugd. V. & P. v. 3, p. 435.) And it was also clear, that where there are concealed incumbrances, the latest purchaser cannot call for contribution against former purchasers, (Sugd. V. & P. v. 2, p. 487.) Besides, it was in evidence, that Elizabeth Rogers, one of the parties beneficially interested, had released all her right and interest, and yet she was joined as a co-plaintiff. In this suit, therefore, the plaintiffs could obtain no decree; for it had been expressly determined by the present Chancellor when Master of the Rolls, in *Bill v. Cureton*,* that where a plaintiff associates himself with a co plaintiff who has no title, he cannot in that suit obtain

* Shelford on Lunacy, p. 99.

* 2 Myl. & K. 512.

any relief, although he might in a suit in which he was sole plaintiff be entitled to a decree.

Temple, Girdlestone, and Roupell for the defendants Holder and Oliver, who claimed in respect of that portion of the property which had not been conveyed, urged the hardship of imposing on one estate, burthens which ought to be borne equally by all. Where there is no concealment, all parties are equally liable; and so the *Lord Chancellor* had held in this case, for he had expressly said that if estates are devised to three parties, subject to charges, they are all equally liable, and there is no difference if they are devised only to one. All the defendants were aware of the contents of the will, and it was not pretended that the defendants who claimed to be exempt, could show any just grounds for shifting the burthen from themselves, except such as were suggested by the accident of their having completed their purchases. There should at all events be an enquiry as to the extent of the liabilities of the respective defendants who were possessed of the testator's estate.

The *Vice Chancellor* said there could be no doubt of the property in the hands of Holder and Oliver being in the first place liable to the legacies; and the Court would make a declaration to that effect, and decree a sale of that property, and an account of the rents and profits. If the plaintiffs chose to dismiss the bill against the other defendants, they were at liberty to do so; but if otherwise, they must continue before the Court, and their costs must be reserved. There must also be a receiver.

Temple suggested that the bill did not pray a receiver; but his Honour said that was of no consequence at the hearing, although such an objection might be urged on a motion for a receiver.

[An objection was taken during the hearing by the counsel for the defendants Holder and Oliver, on the ground of their not being made parties to the supplemental suit, they insisting that they had no means of knowing what the effect of that suit might be, and that its operation must therefore be deemed confined to the parties against whom it was filed; but the *Vice Chancellor* held that it was to be considered as part of the original record, and that the intent of it being simply to bring the other purchasers before the Court, there was nothing of which they required to be informed.]

Rogers v. Rogers, June 6th and 7th, 1841.

Queen's Bench.

[Before the four Judges.]

CRIM. CON.

Though a husband and wife may be living separate from each other, under a deed proposed and executed by the husband, but not executed by the wife, and though other circumstances exist to shew that it was the husband's desire that they should be separate, yet he can maintain an action for criminal conversation against a person for an adultery committed after the separation.

This was an action for criminal conversation with the plaintiff's wife. The cause was tried before Lord Denman, at Westminster, in the sittings after Trinity Term, when it appeared that the plaintiff had become acquainted with the lady in 1834, that he had seduced her and she had a child in June, 1835. He then refused to marry her, but finally did so in Feb. 1836. In the course of a short time, quarrels having arisen, he proposed a separation, she objected to it, but a separation did actually take place. The parties, however, again came together, and lived as husband and wife till Aug. 1837, when the husband again proposed a separation, and desired that a deed of separation might be prepared. The wife again refused to consent to the separation, but the deed was prepared, and the husband signed and executed it. The wife still refused to execute the deed, but a separation did actually take place in the month of August. In 1839 the adultery was proved to have taken place. It was submitted that the plaintiff could not maintain the action as he had abandoned his wife, and thus so far as he was concerned, put an end to the *consortium*, the loss of which was the very gist of the action. The Lord Chief Justice refused to stop the cause, but he left the facts to the jury, and asked them whether they believed that the husband had permanently abandoned his wife. The jury did not answer this question in the terms in which it was put, but found the plaintiff had "morally deserted his wife," and, on the general merits of the case, returned a verdict for the plaintiff, damages one farthing. A rule had since been obtained to set aside this verdict and enter a nonsuit, on the ground that the action was not maintainable, or have a new trial on the ground that the jury had improperly refused to answer the question which had been put to them.

Mr. *Theiger* and Mr. *Bere* shewed cause against the rule. The mere separation of husband and wife does not put an end to the rights of the former, nor prevent him from maintaining an action like the present. The right of action here exists in virtue of the relation of character between the parties. [Mr. Justice *Patteson*.—That argument would go the length of shewing that if a party had wilfully been a party to his own dishonour, he could, nevertheless, in virtue of the mere relation of husband and wife, maintain this action.] No, he cannot maintain the action without shewing that he came into Court with clean hands. [Mr. Justice *Patteson*.—But is he not in some way a party to his own dishonour if he abandons his wife.] He cannot be so considered, for the Court can only look to what must be deemed the necessary consequences of such a separation, and adultery is not one of them. A defence that a man was a party to his own dishonour is equivalent to a defence of license, and that ought to be placed on the record. That has not been done here. There could be no permanent abandonment in this case, for the wife refused to execute the

deed of separation. *Weedon v. Timbrell*,^a and the cases which followed it,^b were overruled in *Chambers v. Coulfield*,^c shewing that an action of this sort is maintainable. Even after a separation, a husband has an interest in the wife, for he may be compelled to support the children she may have. He has, therefore, an interest to see that she has no illegitimate children. The law will not suppose a separation between husband and wife to be permanent, and any act of either party is allowed, at any moment, to put an end to such separation. What had been done here did not therefore amount to an abandonment, and the plaintiff is entitled to maintain the action.

Mr. Erle and Mr. Watson, in support of the rule.—The husband here, against the consent of the wife, separated himself from her, and continued so separated up to the time of the adultery, contrary to her entreaty, and without any reason or excuse: so that he himself wilfully deprived himself of the society of his wife. There may be a husband who from caprice or still more wicked motives, may drive his wife from his home, and may then look after her with no other feeling nor interest than that of discovering ground for a complaint of adultery on which to raise a suit for a divorce. Is such a state of things to be encouraged? Lord Kenyon's judgment in *Weedon v. Timbrell*,^d is important on this point, for it proceeds on the principle that the very gist of the action is the loss of the society of the wife; and where the plaintiff was by his own act deprived of that society, he cannot complain of any such loss. *Chambers v. Coulfield*,^e did not overrule that case, but proceeded entirely on the particular circumstances there proved. *Winter v. Henn*,^f decided that a husband by totally and permanently giving up the advantage of his wife's society, deprived himself of the right to a verdict in an action of this kind. *Hodges v. Windham*,^g *Duberley v. Gunning*,^h are all in point to shew that where the adultery does not occasion to the husband the loss of the wife's society, he cannot maintain an action. [Mr. Justice Patteson.—Suppose a woman had left her husband without any arrangement whatever, and then chooses to return; but pending the separation, she has committed adultery, could it be said that the act of adultery was the cause of the loss of the consortium?] In that case the loss of the consortium would not be the consequence of the husband's own wrongful act, [Mr. Justice Patteson.—Then is it necessary to raise your present argument that the loss of the consortium should be the result of the husband's conduct?] It is; and that misconduct does exist here. The ground for a nonsuit is therefore complete. Then, as to the new trial, it is clear that there was a total abandonment of

the wife by the husband, and the jury ought to have found that fact upon the evidence given at the trial.

Lord Denman, C. J.—It appears to me, that this defendant has failed to establish his title to a nonsuit. I cannot conceive any case in which it can be said that a husband can be altogether denuded of all interest in the wife's conduct. Though it may be true in this case that he was not residing with her, and in that sense of the expression was not in the enjoyment of the consortium; yet if we were to say that that fact alone was to defeat the right of action, some most absurd and extraordinary consequences would follow. Any separation, whatever might be the motive of advantage, health, or comfort, would then be sufficient to defeat the action. Separation is undoubtedly a circumstance which the jurymen are bound to take into their consideration as diminishing the amount of injury which the husband has sustained from the loss of the wife's society. This event, and the attendant circumstances, have been, and as I think properly, submitted to the consideration of the jury in the present case, and the jurymen have found low damages, such as rational men might have been expected to give. Then the question is, whether a new trial is to be granted because the jury declined to give a specific answer to the question whether the husband had permanently abandoned the wife. The answer was, that he had "morally deserted" her. There could be no other answer, except on a positive intimation by the husband to that effect. If he had distinctly intimated that he no longer chose to take any care or interest about his wife, and his conduct had been in accordance with the intimation, the question as to the consequence of an abandonment might then have arisen; but the jury had a right to refuse, in any other way, to answer the question put to them without proof of any such intimation having been given. I think, therefore, that there is no ground for a new trial. On both grounds, consequently, the rule must be discharged.

Mr. Justice Patteson.—A most important question has been treated of in the argument in this case; but the facts here do not properly raise that question. *Weedon v. Timbrell* has been referred to as if it was necessary that we should adopt the doctrine laid down in that case, or overrule it. But it is not necessary for us to do either the one or the other. We need not go further than the circumstances of this case require. I do not think that in this case the defendant is entitled to a nonsuit. In the first place, there is not here any deed of separation. There was a deed prepared, which the husband executed, but which the wife refused to execute. So that here was no separation by mutual consent, and therefore nothing on which the question could be raised. There is nothing by which the parties mutually agreed that they would not any longer live together. He may have forsaken her for a time, or for ever; but there is nothing to show that it was the declared intention of both parties never to come together again. It seems to

^b *Hodges v. Windham*, Peake, 39; *Bartelot v. Hurshen*, Peake, 7.

^c 6 East, 244; 2 Smith, 356.

^d 5 Term Rep. 357.

^e 6 East, 244.

^f 4 Car. & Pay. 494.

^g Peake, 39.

^h 4 Term Rep. 65.

me, therefore, that we are not here called on to say whether the decision in *Weedon v. Timbrell* is good or bad, for the same state of facts does not exist in both cases. Then comes the question as to the new trial. On this point the question in this case was put to the jury in nearly the same language as in the case of *Winter v. Ede*, and the jury refused to answer the question in the terms put to them. We do not know what is the meaning of morally deserting the wife. If the jury had answered the question to the form put to them in the affirmative, there might have been a question whether there ought not to be a new trial, on the ground that the verdict was against the evidence in the cause. I do not think that the question of law now submitted to us is properly raised in this case, and therefore that there cannot be a nonsuit. Nor can there be a new trial; for even if the rule in *Weedon v. Timbrell* is right, the circumstances here do not bring this case within the rule.

Mr. Justice Williams concurred.

Rule discharged.—*Dundas, clerk v. Hoey*, T. T. 1841. Q. B. F. J.

Queen's Bench Practice Court.

CAPIAS AD SATISFACIENDUM.—TESTATUM CLAUSE.—IRREGULARITY.—NULLITY.—PRISONER.—LACHES.

If a writ of testatum capias ad satisfaciendum is issued into a county different from that in which the venue is laid in the action, without a previous original writ of capias ad satisfaciendum, it is an irregularity merely, and not a nullity, and consequently a delay of six years in moving to take advantage of the irregularity amounts to such laches as renders it unavailable to the defendant, although a prisoner.

In this case an action had been brought against the defendant, and the venue was laid in the city of London. Judgment having been obtained, the plaintiff, without suing out an original writ of *capias ad satisfaciendum* into the city of London, issued a writ of *testatum capias ad satisfaciendum* into the county of Surrey. This was in the year 1836, and the defendant was accordingly taken on the writ; from that time to the present Trinity Term he remained in custody.

Archbold, at the beginning of the term, applied for a rule to shew cause why the defen-

dant should not be discharged on the ground of the course which the plaintiff had pursued with respect to the execution, in not suing out an original writ of *capias ad satisfaciendum* previous to suing out a writ of *testatum capias ad satisfaciendum*. A rule nisi for that purpose having been granted,

Fortescue now shewed cause, and contended that the omission in question only amounted to an irregularity: it was a defect which might be amended between the granting the rule and the shewing cause against it. If it was an irregularity, the lapse of time since it had been committed completely cured it. The writ had been put in force six years, and the defendant, if he intended to make any objection to the proceeding, by virtue of which he was in custody, should have applied earlier. The present rule ought therefore to be discharged.

Archbold supported the rule. The writ of *testatum capias ad satisfaciendum* being issued into a county in which there was no judgment to support it, must be considered as a nullity. Being a nullity, it was no objection that the defendant had lain by so many years without moving for his discharge. It was a well-established rule of practice that the lapse of time cured an irregularity, but not a nullity. This being a nullity, no laches existed on the part of the defendant, which cured the defect in the plaintiff's proceedings; the defendant was consequently entitled to his discharge out of custody as to this action.

Wightman, J., was of opinion that the objection taken only amounted to an irregularity, and consequently that the lapse of time would waive it. In this case six years had elapsed since the defendant had been taken on the supposed defective process; that was quite a sufficient lapse of time to operate as a waiver. The present rule must consequently be discharged.

Rule discharged.—*Warne v. Haddon*, T. T. 1841. Q. B. F. C.

REFERENCE TO MASTER.—DRAWING UP RULE.—ALTERING RULE.

A rule was made absolute for referring it to the master to determine what was due on a certain account; but the Court refused to permit the sum when ascertained to be introduced into the rule.

In this case a rule nisi was obtained to refer it to the master to ascertain what was due for money and costs to the party applying. No cause being shewn against it,

J. W. Smith applied that the rule might be made absolute, and that the sum due, when the master should have determined, should be introduced into the rule so made absolute.

Wightman, J., thought that he could not grant such an application, as the rule would be made absolute to-day, and the sum be hereafter ascertained.

Rule absolute.—*Ex parte Cox*, T. T. 1841. Q. B. P. C.

¹ See the principle of law stated by Lord *Tenterden* in *Hall v. Hollander*, 4 Barn. & Cres. 663. See also *Warrender v. Warrender*, 2 Clark & Fennelly, where Lord *Brougham* (p. 526) in delivering the judgment of the House of Lords, said—"So far has the legal presumption of cohabitation been carried by the Common Law Courts that the most formal separation can only be given in evidence in mitigation of damages, and not at all as an answer to an action for criminal conversation, the ground of which is the alleged loss of comfort in the wife's society."

MISCELLANEA.

ELOQUENCE OF BURKE.

Law—He has heard as well as I, that when great honours and great emoluments do not win over this knowledge (of law) to the service of the state, it is a formidable adversary to government.—*Burke's Speeches*, 1 vol., 291.

This study renders men acute, inquisitive, dexterous, prompt in attack, ready in defence, full of resources. 1 vol., 291.

Judges.—As public places are held for an uncertain time, and are suddenly filled by perfect strangers, if the public places be so few in number that many most necessary and unchanging duties, both extensive and intricate, have to be attached to them, who can suddenly be able to perform them efficiently, and acquire an adequate knowledge timely enough to be used, before a change is made? Such public places, therefore, can never be performed properly, and the state, therefore, ever damaged by them.

The ease, therefore, and independence of the *judges* ought to supersede all other considerations, and they ought to be the very last to feel the necessities of the state, or to be obliged to court or bully a minister for their rights. The judges are, or ought to be of a reserved and retired character, and *wholly* unconnected with the political world. 2 vol., 81.

Courts of law having such principles established for guiding their decisions as neither the people nor parliament are efficiently acquainted with, such results might arise (from the judges being reserved and *unpolitical* characters) as might be hostile to present measures, and hurtful to parliament, and the state, from its present circumstances; but then truly it may be said that judges' conduct are respecting the public, and the public can acquaint the commons, and thus rising illa be checked.

Legal Writer.—He had written on the "Criminal Law," and, by a fertile imagination, bright imagery, and consummate judgment, had so enlightened his subject, that a study, in itself irksome, crabbed, and disgusting, was rendered rather an amusement than attended with that severity of thought and intense application requisite to unfold the labyrinths which our more ancient law sages have led the young beginner into. 2 Vol. p. 134.

With regard to the author quoted by the learned gentlemen, would any man say that a writer was bound to follow, in all cases, and under all circumstances, those arguments which he had thought *wise* and *proper* ten years ago, when times and circumstances were excessively different. 2 Vol. p. 154.

Maxims.—Every country wishing to preserve its liberty, must preserve its maxims. There were maxims in all countries which were supplemental to the laws, and if any principle was

necessary in a free country, it was that of adhering to its ancient and established maxims. Therefore it was, that wise republics had bound themselves down by laws that certain offices should only be filled by certain men, of a certain age; and those laws were never broken in upon, except when the country was on the verge of ruin. 3 vol. 443.

MICHAELMAS TERM EXAMINATION.

According to the printed List, the persons applying for admission in the next Term, are	161
From which number must be deducted those who have been already examined, namely—	
23 in the last Term, and	
3 in former Terms	26
	135

Then there are several to be added, who have given notices of examination only, and whose names do not appear in the printed List of Admissions	11
	146

This number includes one applicant for Examination in Chancery, and one who has omitted to give notice of Examination, but who, on sufficient ground, may be allowed to give notice *nunc pro tunc*.

According to this statistical information, the diminution in the number of legal competitors which appeared in Hilary and Easter Terms, does not continue. In Hilary there were only 90 persons examined, and in Easter 93. We must, however, allow a considerable per centage off the above 146.

THE EDITOR'S LETTER BOX.

A correspondent is informed that the branches of the law to which he refers are Common Law and Equity, with either Conveyancing, Bankruptcy, or Criminal Law. It does not appear necessary to answer every question, but the candidate should do his best.

The treatises inquired after by H. W. on the Law of Vendors and Purchasers of Personal Property, are by Mr. Ross and Mr. Morton.

The suggestion of "A Constant Reader" shall be attended to.

D. S. is informed that the Digest includes all the Reports he refers to as soon as they are published. Of course, they cannot be all in each part.

The Legal Observer.

SATURDAY, JULY 10, 1841.

— "Quod magis ad nos
Pertinet, et nescire malum est, agitamus.

HORAT.

LAWYERS IN THE NEW PARLIAMENT.

THE greater part of the elections are now over, and the borough elections decide the fate of the lawyers, as few professional men ever contest a county. We shall now, therefore, endeavour to give a complete list of the lawyers in the present Parliament, which we believe to be as follows. As well as the lawyers in actual practice, we mention those who have at one time or other been seen in Westminster Hall.

Aglionby, H. A.	Cockermouth.
Blewitt, R.	Monmouth.
Buller, Charles	Liskeard.
Collett, W. A.	Lincoln.
Creswell, C., Q.C.	Liverpool.
Cripps, John	Cirencester.
Dundas, D.	Sutherlandshire.
Elphinstone, H.	Lewes.
Ewart, Wm.	Dumfries.
Follett, Sir Wm., Q.C.	Exeter.
Godson, Richard, Q.C.	Kidderminster.
Grainger, T. C.	Durham.
Greene, T.	Lancaster.
Grey, Sir G., Rt. Hon.	Devonport.
Grimesditch, J.	Macclesfield.
Hayter, W. G., Pat. Prec.	Wells.
Hope, G. W.	Weymouth.
Jervis, John, Pat. Prec.	Chester.
Law, C. E., Q.C.	Cambridge University.
Macleod, Donald	Oxford.

Marshall, W.	Carlisle.
Nicholl, Dr.	Cardiff.
Parker, John	Sheffield.
Pollock, Sir F., Q.C.	Huntingdon.
Philpotts, John	Gloucester.
Pemberton, T., Q.C.	Ripon.
Roebuck, J. A.	Bath.
Sudgen, Sir E., Rt. Hon.	Ripon.
Tancred, H. W.	Banbury.
Thesiger, F., Q.C. ..	Woodstock.
Villiers, C. P.	Wolverhampton.
Wason, Rigby	Ipswich.
Watson, W. H.	Kinsale.
Wilde, Sir Thos., A.G.	Worcester.
Wigram, James, Q.C.	Leominster.
Wrightson, W. B. ..	Northallerton.

We regret that all our friends were not successful on the present occasion. Mr. Fitzroy Kelly failed at Ipswich, the Hon. A. J. Ashley at Salisbury; Serjeant Goulburn at Carlisle, Mr. Bernal at Weymouth, Mr. Freshfield at Wycombe, and Mr. Tooke at Reading.

We have also to regret that several lawyers who were in the last Parliament have apparently forsaken the present. They chiefly, if not entirely, belong to the Whig party. Mr. Erle, Serjeant Talfourd, Sir Charles Grey, and Mr. James Stewart are in this list. We hope, however, to see all of them at some future time again in the House of Commons. The number of lawyers is altogether smaller than on any former occasion.

P

NOTES ON EQUITY.

ORDERS OF MAY 1839.

By the orders of May 1839 (printed 18 L. O. 60) in all cases in which it shall appear that certain preliminary accounts and inquiries must be taken before the rights and interests of the parties to the cause can be ascertained, or the questions arising thereon can be determined, the plaintiff shall be at liberty at any time after the defendants shall have appeared to the bill, to move the Court on notice that such inquiries and accounts shall be made and taken, and that an order referring it to the Master to make such inquiries and take such accounts, shall thereupon be made without prejudice to any question in the cause. Under this order it has been held that the preliminary accounts and inquiries may be taken and made, although the cause has been set down for hearing, and that that circumstance did not prevent the application of the order under which the motion was made. *Strother v. Dutton*, 10 Sim. 288. It has also been held that the Court will not direct preliminary inquiries to be made under the order, unless it is plain that they would be directed at the hearing, and would be binding on the parties to the suit. *Meinertzhagen v. Davis*, 10 Sim. 289.

HUSBAND AND WIFE.

ALTHOUGH a husband and wife lived separate, if the wife dies possessed of cash and bank notes arisen from property settled to her separate use, the husband will be entitled to them *jure mariti*, although he has not taken out letters of administration to her. Sir L. Shadwell, V. C., said, "Mrs. Molony's annuity of 800*l.* and everything that arose from it was exempt from the controul of her husband during her life, and as the cash and bank notes which were found in her possession at her death arose from that annuity, they were part of her separate property, and she might have disposed of them either by deed or will. But as she made no disposition of them, the quality of separate property ceased at her death: the consequence is, that Mr. Molony is entitled to them in his marital right." *Molony v. Kennedy*, 10 Sim. 255.

CHANGES IN THE LAW,
IN THE LAST SESSION OF PARLIAMENT.
No. IX.

PUNISHMENT OF PEERS.

4 & 5 Vict. c. 22.

An Act to remove doubts as to the liability of Lords and Peers of Parliament to punishment in certain Cases of Felony.

[21st Jan., 1841]

7 & 8 G. 4, c. 28. 1 Edw. 6, c. 12, s. 13. Part of recited act repealed. *Peers convicted of felony liable to same punishment as other subjects.*—Whereas doubts have been entertained whether, notwithstanding the provisions of an act passed in the seventh and eighth years of the reign of his late majesty King George the Fourth, intituled 'An Act for further improving the Administration of Justice in criminal cases in England,' so much of an act passed in the first year of the reign of his majesty King Edward the Sixth, intituled 'An Act for the repeal of certain Statutes concerning Treasons and Felonies,' as enacts 'that in all and every case and cases where any of the king's majesty's subjects shall and may, upon his prayer, have the privilege of clergy as a clerk convict that may make purgation, in all those cases and every of them, and also in all and every case and cases of felony wherein the privilege and benefit of clergy is restrained, excepted, or taken away by this statute or act, (wilful murder and poisoning of malice prepense only excepted,) the lord or lords of the parliament, and peer and peers of the realm having place and voice in parliament, shall, by virtue of this present act, of common grace, upon his or their request or prayer, alleging that he is a lord or peer of this realm, and claiming the benefit of this act, though he cannot read, without any burning in the hand, loss of inheritance, or corruption of his blood, be adjudged, deemed, taken, and used, for the first time only, to all intents, constructions, and purposes, as a clerk convict, and shall be in case of a clerk convict which may make purgation, without any further or other benefit or privilege of clergy to any such lord or peer from thenceforth, at any time after, for any cause to be allowed, adjudged, or admitted, any law, statute, usage, custom, or any other thing to the contrary notwithstanding,' may not, for some purposes, still remain in force: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that so much of the said last-mentioned act as is herein-before recited shall from henceforth be repealed and utterly void, and no longer of any effect; and that every lord of parliament, or peer of this realm having place and voice in parliament, against whom any indictment for felony may be found, shall plead to such indictment, and shall upon conviction be liable to the same punishment as any other of her majesty's subjects, are or may be liable upon conviction for such felony, any law or usage to the contrary in anywise notwithstanding.

No. X.
TURNPIKE ROADS.
4 & 5 Vict. c. 33.

An Act to amend the Acts for regulating Turnpike Roads in England, so far as they relate to certain exemptions from toll.

[21st June, 1841.]

3 G. 4, c. 126. Toll not to be taken for carts, &c. crossing roads, or passing not above one hundred yards thereon.—Whereas doubts are entertained whether, under the provisions of an act passed in the third year of the reign of his late majesty King George the Fourth, intituled, “An Act to amend the General Laws now in being for regulating Turnpike Roads in that part of Great Britain called England, and of several other acts amending the same, asses, beasts, or cattle, other than horses, or waggons, carts, or vehicles, other than carriages, which shall only cross any turnpike road, or shall not pass above one hundred yards thereon, are exempted from tolls:” for the removal therefore of such doubts, he it enacted by the Queen’s most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that no toll shall be demanded or taken for or in respect of any horse, ass, sheep, swine, or other beast or cattle, of any kind whatsoever, or of any waggon, cart, vehicle, or other carriage, of any kind whatsoever, which shall only cross any turnpike road, or shall not pass above one hundred yards thereon.

2. *Extending powers of former acts to this act.*—And be it enacted, that all and every the powers, provisions, authorities, penalties, and forfeitures contained in the said recited act, and in the several other acts for regulating turnpike roads in England, (save and except such parts thereof as are varied, altered, or repealed,) shall be as good, valid, and effectual for carrying this act into execution as if the same had been repeated and re-enacted in the body of this act, and that the said recited act and this act shall be construed together as one act.

3. *Not to affect roads exempted by recited act.*—Provided always, and be it enacted, that nothing in this act contained shall extend or be construed to extend to or affect any road or roads in the said recited act mentioned to be exempted from the provisions thereof.

The following are the titles of the other public acts passed in the last session, down to 21st June.

Cap. 21. An Act for rendering a release as effectual for the Conveyance of Freehold Estates as a lease and release by the same parties. See p. 52. [18th May, 1841.]

Cap. 23. An Act to suspend until the thirty-first day of August, one thousand eight hundred and forty-two, the making of lists, and the ballots and enrolments for the militia of the United Kingdom. [21st June, 1841.]

Cap. 24. An Act to amend an Act to grant certain powers to heirs of entail in Scotland,

and to authorize the sale of entailed lands for the payment of certain debts affecting the same. [21st June, 1841.]

Cap. 25. An Act to amend and continue for one year, and to the end of the then next Session of Parliament, the several acts relating to the importation and keeping of arms and gunpowder in Ireland. [21st June, 1841.]

Cap. 26. An Act to continue compositions for assessed taxes, until the fifth day of April, one thousand eight hundred and forty-three. [21st June, 1841.]

Cap. 27. An Act to enable her Majesty’s commissioners of woods to complete the contract for the sale of York House, and to purchase certain lands for a royal park. [21st June, 1841.]

Cap. 28. An Act to prevent plaintiffs in certain frivolous actions from obtaining their full costs of suit. See p. 162. [21st June, 1841.]

Cap. 29. An Act for granting to her Majesty, until the fifth day of July, one thousand eight hundred and forty-two, certain duties on sugar imported into the United Kingdom, for the service of the year one thousand eight hundred and forty-one. [21st June, 1841.]

Cap. 30. An Act to authorize and facilitate the completion of a survey of Great Britain, Berwick upon Tweed, and the Isle of Man. [21st June, 1841.]

Cap. 31. An Act to provide for the surrender of premises formerly used for court houses, but no longer used for that purpose, in Ireland. [21st June, 1841.]

Cap. 32. An Act to amend an Act to extend the Practice of Vaccination. [21st June, 1841.]

Cap. 34. An Act to explain and amend an Act of the fifth year of King George the Fourth, for repealing certain duties on law proceedings in the Courts in Great Britain and Ireland respectively, and for better protecting the duties payable upon stamped vellum, parchment, or paper. See p. 197. [21st June, 1841.]

Cap. 35. An Act for the commutation of certain manorial rights in respect of Lands of Copyhold and Customary Tenure, and in respect of other lands, subject to such rights, and for facilitating the enfranchisement of such lands, and for the improvement of such tenure. See p. 129. [21st June, 1841.]

Cap. 36. An Act to amend an Act of the fifth and sixth years of King William the Fourth, “for the more easy Recovery of Tithes;” and to take away the jurisdiction from the Ecclesiastical Courts in all matters relating to Tithes of a certain amount. [21st June, 1841.]

Cap. 37. An Act for the more easy Recovery of Arrears of Compositions for Tithes from persons of the persuasion of the people called Quakers in Ireland. [21st June, 1841.]

Cap. 38. An Act to afford further Facilities for the Conveyance and Endowment of Sites for Schools. [21st June, 1841.]

THE LAW OF LIBEL,
AS STATED BY THE CRIMINAL LAW COMMISSIONERS.

Continued from p. 169.

"Truth or falsity of the communication.— The truth or falsity of the matter published is a consideration of the greatest importance to the due adjustment of this branch of the law. In order justly to appreciate the bearing and weight of this distinction, it is necessary to remember that although the injuries at present under consideration are, by the characteristics already adverted to, connected in their qualities and necessary incidents, the injuries so connected vary much from each other in particulars very important to the present purpose. As regards mere personal injury, the offence, as has been seen, may be considered either as it concerns the public, in its tendency to disturb the peace, or the individual, as tending to his private detriment. Here, then, the distinction as to the truth or falsity of the matter published may have a very different application. With a view to the preservation of the public peace it cannot be very material whether the personal imputation be true or false; ill-blood and a thirst for vengeance may be excited by a publication of that which is true as well as of that which is false, according to the common adage, "the greater the truth, the greater the libel," or in other words, where the imputation is just, the more likely may the party be to resort to retaliation by force, and thus disturb the peace. It is therefore obvious that it would be contrary to the principle of a law devised for the preservation of the public peace to limit its operation to the publication of merely false imputations. If, on the other hand, it should be deemed to be just and expedient that the penal law should in principle extend to the protection of private character from aggression, it becomes most important to consider whether that protection ought not to be confined to false imputations. The injuries to be provided against in the two cases are perfectly distinct in their nature; in the one case the injury is done to society by endangering the public peace, in the other it is done to the individual as tending to deprive him of that which he has a right to enjoy,—in which latter case, although the injury be of a private nature as affects the individual sufferer, it may yet be properly the subject of penal cognizance on the same principle of necessity or convenience which visits the spoliation of private property as a public offence. As regards the defamed party, the truth or falsity of the statement makes a wide difference as to the nature and extent of the injury. The mere publication of the truth may under particular circumstances be a very vexatious act, but to destroy the character of another by a wilful misrepresentation is a *fraudulent* as well as malicious act; it is not simply an attempt to destroy reputation, but to do so under the semblance of truth. As regards, therefore, the mere act of the offender, there is a great difference in respect of the truth or falsity of the

matter published. In reference to the party who is the object of the charge, the distinction materially affects the nature of the injury. The right of a criminal to compel the rest of the world to silence is questionable, and bears little resemblance to the right of an innocent person to protection from false and injurious aspersions. This distinction may therefore very reasonably influence the law so far as the protection of private character is concerned. The truth may operate either to exclude criminal liability, and that either absolutely or *sub modo*, or to mitigate the penalty. To found no distinction in such cases between truth and falsehood would be as little consistent with moral as with legal principles, and it could be scarcely expected that laws which so confounded, or at least so entirely overlooked the wide moral distinction between truth and falsehood, should ever meet with general respect and approbation. With a view to the public peace the case is widely different. Open, malicious, and unnecessary imputations, though true, are properly of criminal cognizance, because, notwithstanding their truth, they still tend to the disturbance of the peace; but, as regards the principle of merely preserving the public peace, the truth or falsity of the matter published being indifferent, and not a ground of justification or even of extenuation, it is obvious that, to be consistent, the principle ought to prevail throughout, and that, if by virtue of such considerations, the evidence of the truth were to be entirely excluded, no higher penalty ought to be inflicted than should be inflicted in case the imputation were true,—to inflict any higher would be not merely to give weight to a bare assumption, it would be unjust in the extreme to punish a party as for a false statement, without allowing him to prove it to be true.

"From such considerations, we think that the following conclusions may properly be deduced: That in reference to one principal object in restraining defamatory communications, viz., the preservation of the public peace, the rule may with perfect consistency and correctness be adopted, that the truth or falsity of the statement shall be deemed to be indifferent, punishment being inflicted in respect of the mischief and danger to the public peace, and that only. But that if the law also interferes, as we think it ought, on a distinct ground, viz., for protecting private reputation from defamatory injuries, then it would be inconsistent with the principle thus adopted to regard the truth or falsity of the statement as indifferent; for upon that question must the right to expect protection from the criminal law, as well as the right to a remedy in damages, essentially depend. For these reasons we also conclude that the offence, as regards the public, ought to be regarded as distinct from that which concerns the injury to private reputation, and the treating them in this manner would, we think, tend to remove difficulties and anomalies with which the English law of libel is at present encumbered.

"It may perhaps be objected that were a defamatory communication to be made penal, not strictly on the narrow principle of protec-

tion to the public peace, but on the more extensive one of protection to private reputation for reputation's sake, the consequence would be that an indefinite multitude of offences against morality, of which the penal law takes no direct cognizance, would thus indirectly become subject to legal investigation.

"This objection, however, would apply also to the case of an action to recover damages. And although, so long as the principle of penal restraint were simply the preservation of the public peace, there would be no inconsistency in excluding all consideration of the truth or falsity of the offensive statement, yet if the law recognized the principle of protection to private reputation, independently of that of danger to the public peace, the necessary consequence would be the regarding the falsity of the charge as of the essence of the wrong, just as much in the criminal as in the civil proceeding by one who complained of injury done to his reputation. The question, therefore, really resolves itself into this, whether the law ought to recognize the injury to private reputation by a false and malicious calumny as a substantive offence, or as an aggravation of the offence committed by endangering the public peace.

"By way of illustration of the preceding observations, let it be supposed that *A.*, a tradesman, indicts *B.*, another tradesman, for having published in a newspaper that he *A.* was a swindler, and had endeavoured to defraud, by means specified in the libel. As the law stands, on not guilty being pleaded by *B.*, the sole question would be, whether *B.* had in fact published the libel; he would not be allowed, for any purpose, to prove that what he so published was true. *A.*, on the other hand, would be excluded from evidence to shew that the imputation contained in the libel was false. And the publication having been proved, *B.* would be found guilty, and would not be permitted to shew, by affidavit or otherwise in mitigation that the charge in the libel was true. Under these circumstances it is presumed that the punishment would be regulated by the principle of danger to the public peace resulting from the provocation offered to *A.* to break the peace in revenge for the imputation on his character, (the truth or falsity of that imputation being wholly indifferent,) and consequently that no greater punishment could properly be inflicted, than would have been inflicted had it been admitted or proved that the imputation was true. To inflict any greater punishment upon the presumption of the charge being false, or on a mere speculation of its being false, when *B.* was ready to prove the contrary, would be opposed to every man's common sense of justice. *B.* then would be liable to such punishment as such a provocation to a breach of the peace might deserve, assuming the charge to be true, and to no greater.

"The question whether *A.* was guilty or innocent has hitherto been left out of consideration: it has been considered only as between *B.* and the public, between which parties

the merits of *A.* and the private injury to his reputation are regarded as wholly indifferent. Now, however, let the case be considered as it regards *A.* and *B.* If *A.* were innocent, and *B.* guilty of a false and malicious invention, which he published to destroy *A.*'s character, it is obvious, that the law might justly be regarded as defective, in not affording to *A.* a sufficient protection against such an injury, and as being indeed not at all adapted to the purpose; the injury meant to be prevented being simply that likely to be occasioned to the public; so far is this from being an adequate and beneficial protection to *A.*'s character, that the injury is carefully excluded from consideration, and *A.* has it not in his power even to vindicate his character, and repel the charge by evidence. It may be said that he may resort to his action for damages,—that course, however, may be out of the question; his calumniator may be a mere pauper: and it may again be observed, that it is difficult to suggest any good reason for making penal restraints for the protection of property, or for the safety of the person, which would not be equally applicable to the providing for the protection of reputation. Again, still supposing the libel to be false, *B.* is punished, but his punishment is wholly inadequate to the real nature and mischief of the offence; he is punished for an indirect endeavour to provoke another to break the peace; the wicked means, the malignant attempt to destroy reputation are disregarded; the law, contemplating only the narrow technical principle of tendency to disturb the peace, makes no distinction between one who oversteps the legal boundary for an honest purpose, and the destroyer of another's reputation by deliberate falsehood. Whilst it is difficult to carry so apathetic a doctrine into effect with strict regard to the conditions essential to justice, it is not remarkable that the principle should be misunderstood, and that a law should be unpopular which apparently confounds truth with falsehood, or even deems the former to be more criminal than the latter.

"The doubts which have been entertained upon the question, whether, with a view to penal consequences, truth may constitute a libel, relate principally, if not exclusively, to libels which impute moral blame to individuals, and not to those which do not reflect upon any person in particular, but which are deemed to be criminal, from their tendency to endanger the security of society by extirpating, or at least weakening, that sense of religious and moral obligation, upon which the happiness and well being of society so essentially depend. To assert that blasphemous, obscene, and criminal acts may be freely described and represented, because they are true, that is, because such things have been acted, would be too absurd a position to be advanced, or if advanced, to need refutation. Again, where an individual was subject to any personal defect or misfortune, or was unfortunate in any of his relations: if any one on that account were to expose him from day to day, and hold him out as the object

of public contempt and ridicule, it could not be doubted, that the truth, as was justly observed by a celebrated statesman,* would rather be an aggravation than an excuse, the world being too apt to consider men as contemptible for their misfortunes than as odious for their vices."

[To be continued.]

DISTRIBUTION UNDER INTESTACY —CUSTOMS OF LONDON AND YORK.

FROM the ninth edition, just published, of Mr. Brady's "Plain Instructions to Executors and Administrators, shewing their duties and responsibilities, with Abstracts of the Legacy Acts," &c., we extract the following statement of the proportions in which property is divisible under an intestacy, according to the Statute of Distributions, and the difference between the Customs of London and York.

"The office of an administrator, so far as it concerns the collecting of the effects, making inventory, and the payment of debts, is the same as that of an executor. But as there is no will to direct the former in the subsequent disposition of the effects, the analogy exists no longer.

"To secure a just division of the property, the Statute 22 and 23, Car. c. 10, commonly called the Statute of Distributions, was enacted; which compels the administrator, after payment of all debts, funeral and just expenses, to make a just distribution of the residue among the wife and children, or children's children, if such there be; or otherwise, to the next of kin to the deceased, in equal degree, or legally representing their stocks, according to certain rules and limitations therein laid down. That is to say, one third to the widow, and the residue in equal portions among the children, or the legal representatives, according to the statute, of such of them as may be dead, other than such child or children, not being heir at law, as shall have any estate by a settlement made by the intestate, or shall have been advanced a portion in the life-time equal to his share; but the heir at law, notwithstanding any land that he may be entitled to by descent or otherwise, is to have an equal share with the rest of the children. If no children, nor any legal representatives of them, half is allotted to the widow, and the remainder among the next of kin of the intestate in equal degree, or those who legally represent them.

"The act also provides that, among collateral relations, none shall take as representatives after brothers' and sisters' children; and if there be no wife, that the whole shall be equally distributed among the children, or the repre-

sentatives, and if no child, among the next of kin, and their representatives, as aforesaid.

"It further directs that, for the benefit of creditors, no distribution shall be made till after the expiration of one year from the death of the intestate; and that every one to whom a share shall be allotted, shall give bond to the court to refund a rateable part of such share, for the payment of any debt due from the intestate, which shall have been sued for and recovered after distribution.

"The statute also expressly excepts the custom of London and York, and other places having peculiar customs of distributing an intestate's effects.

"By the 29 Car. II., c. 3, s. 25, it is enacted that the before-mentioned statute shall not extend to the estates of *feme covert* who die intestate; but that the husband may demand and have administration of their rights, credits, and personal estates, and enjoy the same as before.

"To attain a clearer apprehension of the Statute of Distributions, and the construction of its several points, Sir Samuel Toller, in his 'Law of Executors,' supposes three cases.

"First: where *none* of the intestate's children are dead. Secondly: where the intestate's children are *all* dead, all of them having left children. Thirdly: where some of the intestate's children are living, and some dead, and such as are dead have each of them left children.

"On the first supposition, where *none* of the intestate's children are dead, the wife takes her third, and the remaining two thirds are divided among the children; or if only one child, the two thirds will go to such one child.

"On the second supposition, if A. have three children, B., C., and D. and they all die—B. leaving, for instance, two children, C. three, and D. four, and A. afterwards dies intestate; in that case all his grand-children will take in equal shares, as next of kin, the intestate's children being all dead; and such would also be the case with respect to the great grand-children of the intestate, if both his children and grand-children had all died before him.

"In the above instances the parties are said to take *per capita*, (that is *by heads*, or according to the number of heads) or, in other words, equal shares in their own right, as in equal degree of kindred.

"On the third supposition of some of the intestate's children being living, and some dead, and such as are dead, having each left children; the grand-children take *per stirpes*, (according to their stocks) that is, not in their own right, but as being the representatives of others. As for instance; A. has three sons, B., C., and D. B. dies leaving four children, and C. dies leaving two. On A. (the father) dying intestate, supposing him to have left no widow, one third will be due to D., his surviving child, one third among B.'s four children, and the remaining third between C.'s two children; these grand-children being entitled to their parents' share respectively, as their representatives.

"The next of kin referred to in the Statute

* Mr. Fox, in the debate on the Libel Bill.

are to be traced by the same rules of consanguinity as those who are entitled to letters of administration.

"By this statute, therefore, the mother, as well as the father, succeeded to all the personal effects of their children who died intestate, leaving no wife or child, to the exclusion of the brothers and sisters of the deceased; and so the law still remains with respect to the father: but by 1 James 2, c. 17, if the father be dead, and any of his children die intestate in the lifetime of the mother, she and each of her remaining children, or their issue, shall divide the effects *per capita*, or *per stirpes* as the case may be. But if there be neither brother nor sister of the intestate, nor children of such brother or sister, the whole goes to the mother as before.

"As the statute expressly excepts the custom of London and York, and other places having peculiar customs, a few words will be expected on those customs.

"In the city of London, and province of York, as well as in Scotland, and probably also in Wales (concerning which latter, says Blackstone, there is little to be gathered, but from the Stat. 7 & 8 Wm. 3, c. 38,) the effects of the intestate, after payment of his debts, are in general divided according to the ancient universal doctrine of the *pars rationabilis*, or reasonable part. If the deceased leave a widow and children, his substance, deducting for the widow's apparel and the furniture of her bed-chamber, is divided into three parts, one of which belongs to the widow, another to the children, and the third to the administrator. If only a widow, or only children, they shall respectively, in either case, take one half, and the administrator the other. If neither widow nor children, the whole to the administrator; and this portion going to the administrator, he is bound by 1 Jac. 2, c. 17, to dispose of according to the Statute of Distribution.

"Thus far, and in many other points, as to the portions advanced to any of the children being taken as in part of their shares, &c., the customs of London and York agree; but there are two principal points in which they differ. The one is that in *London* the share of the children is not fully vested in them till the age of twenty-one, (unless there be only one child) before which they cannot dispose of it by will; and if they die under that age, whether single or married, their shares shall survive to the other children. In the province of *York* the orphanage part is vested immediately on the death of the intestate.

"The other difference is, that in the city of *London*, the advancement of a child out of real estate will not bar his claim; but in the province of *York*, the heir of the land, however inconsiderable its value may be in comparison with the personal estate, is totally excluded; even though the land devolved upon him by settlement made on his father's marriage."

COPYHOLD ENFRANCHISEMENT.

FORMS OF PROCEDURE UNDER STATUTE 4 & 5 Vict. c. 35.

[These forms have just been issued by the Copyhold Commissioners.]

* * * *These forms are intended for the guidance of parties availing themselves of the act, but must be varied to suit the particular circumstances of each case.*

INSTRUCTIONS AS TO FORMS OF PROCEDURE.

Under the 4th & 5th Vict. cap. 35.

The following forms will be found to apply to cases of manorial commutations—of partial commutations, that is, by agreements not being manorial agreements, as not including all the tenants of a manor,—and to cases where parties commuting or enfranchising are under disability.

Nos. 1, 2, and 3, include the notices and declarations, which may serve to bring the parties together at a manorial meeting held for the purpose of effecting a commutation.

No. 4, contains forms of minutes of the various proceedings which may be supposed to take place at such meetings. The most important portion of these forms is that which relates to the minute which is to serve as a basis of an agreement for commutation, No. 4, E.

When meetings to commute are assembled, the parties may in some few cases find themselves prepared at once to execute fully, or provisionally, a formal agreement; and in such cases they may proceed at once to use the form marked No. 5, and to make the minute given in Nos. 7 or 8; but it will not often happen that the parties are prepared at once to execute such an instrument; the most that will ordinarily be done at the first, and perhaps some subsequent meetings, will be to assent to principles of commutation, the details of which are subsequently to be embodied in an agreement; and when such preliminary assent has been obtained, a minute should be entered on the proceedings, which may serve as a record of it, and furnish the basis of a formal agreement to be afterwards prepared.

The forms of such minutes as "the basis of an agreement" with variations to meet different cases are given in form No. 4, E.

No. 5, is the form of a manorial agreement to commute. Such an agreement may be either perfect or provisional—that is, the signatures of the parties present may be sufficient to give validity to an agreement, or insufficient. In the second case a provisional agreement only can be executed.

One name at least must be affixed to such a provisional agreement at the meeting itself; the other parties may sign within six calendar months afterwards. See s. 16.

When an agreement, either perfect or provisional, is signed at a meeting, a short minute of that fact should be recorded by the chairman, as in forms Nos. 7 and 8.

The form of a manorial agreement, No. 5, is given to meet cases in which the tenants, or three-fourths of the tenants, in number and value, can determine on the joint considera-

tion to be given to the lord, but cannot at once determine unanimously on the precise portion which is to be contributed by each.

In all such cases, a manorial agreement (Form No. 5) followed by an apportionment under the act, presents the only means of completing the transaction; but if all the tenants can agree amongst themselves, or can trust a valuer, to fix for them, the sums to be paid by each of them, and can thus embody the distribution of the whole sum to be given to the lord in a schedule of apportionment, to be annexed to and form part of their agreement, they will save much of the trouble and expense necessary to complete a manorial apportionment under the act.

To effect this they will use not the form of a manorial agreement (No. 5) but that sort of agreement (see Forms, Nos. 9 and 10), which any two or more tenants are authorised to execute under sec. 52 of the act. These agreements require no previous meeting to give them validity, and if Form No. 10 be used, no subsequent apportionment.

The act (sec. 52) allows any two or more tenants thus to commute by agreement partially, that is, leaving out the other tenants, without previous meetings, and paying no stamp duty (sec. 93); and all such agreements may or may not contain schedules of apportionment. If they do not contain schedules of apportionment, then the steward is to frame one which is to go through all the processes of investigation provided for in the case of apportionments consequent on manorial agreements. Under the same section any one tenant may agree with the lord for commutation; but in such case there will, of course, be no necessity for an apportionment.

A form of agreement to enfranchise, and a schedule of apportionment on enfranchisement, are given in Nos. 11 and 12.

Although the act authorizes the use of partial agreements without schedules of apportionment annexed, it will be very rarely indeed advisable to use such. Parties who agree to commute or enfranchise and embody the consideration to be paid by each in a schedule forming part of the instrument itself, will at once close the whole transaction.

Those who leave a gross sum to be paid to the lord as a consideration, to be afterwards apportioned among them by others, may involve themselves in subsequent valuations, and instruments of apportionment and investigations, and, perhaps, conflicts, of which the expense, the delay, and the trouble may be alike formidable. It may again be remarked here that even where the copyhold or customary lands of a whole manor are commuted or enfranchised, the parties may, possibly, in some few cases agree among themselves as to the consideration to be paid by each, and then the commutation or enfranchisement may at once be effected by an instrument in one of the forms (Nos. 10 or 12), instead of by a manorial agreement in the form No. 5; and if such an instrument, including a schedule of apportionment in the forms (Nos. 10 or 12), can be adopted, it is obvious that much of the trouble

and expense will be avoided, which will attend the completion of an apportionment consequent on a manorial agreement or consequent on partial agreements, containing no schedules of apportionments.

When either lord or tenants are under disabilities, or when they have only a limited estate, such as an estate for life, &c., then it becomes the duty of the commissioners to protect the interests of other parties, who are or may hereafter be interested in the property.

In such cases before confirming deeds or partial agreements, the commissioners will require to know both the value of the property and the nature of the incidents, to which it is subject; and to obtain that knowledge they will require declarations from the steward and a valuer—of which declarations the forms are given in Nos. 14 and 15.

When parties enfranchise by a schedule of apportionment, (see No. 12,) they may find it useful, although not absolutely necessary under the act, previously to sign an agreement, of which a form is given in No. 13.

Although the form of a power of attorney is given in the act (see s. 12) it is here reprinted, see No. 16.

No. 1.

NOTICE AND ADVERTISEMENT OF MEETING BY LORDS [OR LORDS].—Under sec. 13.

Manor of _____ in the County of _____
I, [We] the undersigned being [the duly authorized agent of] a lord [or of the lords, as the case may be] of the said manor, whose interest is [or whose interests are] not less than one-fourth of the whole annual value of such manor, do by this notice under my hand [or our hands] call a meeting of the lords and tenants of the said manor, for the purpose of making an agreement for the general commutation of the rents, fines, and heriots, thereafter to become due in respect of lands holden of the said manor and of the lord's rights in timber, [or of one or more of such rights as may be agreed upon at such meeting] pursuant to the provisions of an Act passed in the fourth and fifth years of the reign of her present Majesty Queen Victoria, intitled "An Act for the Commutation of certain Manorial Rights in respect of Land of Copyhold and Customary Tenure, and in respect of other lands subject to such rights, and for facilitating the enfranchisement of such lands, and for the improvement of such tenure." And I, [we] do hereby give notice, that such meeting will be held at, &c., on _____ day the _____ day of _____ next, at the hour of [eleven in the forenoon.]

Given under my hand [our hands] the _____ day of _____ 18____

[To be signed by the parties, and where signing as agent, to add "agent for C. D., lord of the said manor.]"

Note. That a manor may be such portion or portions of a manor as the commissioners shall, by any order in writing, with the consent of the lord, direct to be considered as a manor. See s. 102.

No. 2.

NOTICE AND ADVERTISEMENT OF MEETING
BY TENANTS.

Under sec. 13.

Manor of }
in the County of }

We, the undersigned being tenants [*or the duly authorized agent or agents of tenants, as the case may be*] of the said manor, do, by this notice, under our hands, call a meeting of the lords and tenants of the said manor, for the purpose of making an agreement for the general commutation of the rents, fines, and heriots thereafter to become due in respect of lands holden of the said manor and of the lord's rights in timber, [*or of one or more of such rights, as may be agreed upon at such meeting,*] pursuant to the provisions of an act passed in the fourth and fifth years of the reign of her present Majesty Queen Victoria, intituled, "An Act for the Commutation of certain Manorial Rights in respect of Lands of Copyhold and Customary tenure, and in respect of other lands subject to such rights, and for facilitating the enfranchisement of such lands and for the improvement of such tenure." And we do hereby give notice, that such meeting will be held at, &c., on day the day of next at the hour of [eleven in the forenoon.]

Given under our hands this day of 18

[To be signed by ten tenants of the manor, or their authorized agents, or where there shall not be so many tenants as ten, then by one-half of the tenants of the said manor or their authorized agents.—See s. 13.]

Note.—A copy of the notices, whether by lord or tenant, should be forwarded to the copyhold commissioners.

No. 3.

DECLARATION THAT NOTICE HAS BEEN DULY
AFFIXED ON CHURCH DOOR, &c.

I, [A. B.] of, &c., do solemnly and sincerely declare, that I did on the day of affix on the principal outer door of the church of the parish of in the county of being as I do verily believe the parish within the limits of which the manor of in the said county, or the greater part thereof in value, extends, [*or did on, &c., affix on the door or on being a conspicuous part of the house, or building, called, &c., wherein the courts of the said manor are usually held*], a notice whereof a true copy is hereunto annexed, and which notice, to the best of my knowledge and belief, was duly signed by the persons whose names are thereunder written, and I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the provisions of an act made and passed in the fifth and sixth years of the reign of his late Majesty king William the Fourth, intituled

"An Act to repeal an Act of the present Session of Parliament, intituled An Act for the more effectual abolition of Oaths and Affirmations taken and made in the various departments of the State, and to substitute declarations in lieu thereof, and for the more entire Suppression of Voluntary and Extra-judicial Oaths and Affidavits; and to make other Provisions for the Abolition of unnecessary Oaths."

*. * The production of the newspapers will shew that the meeting has been duly advertised.

No. 4.

MINUTES OF PROCEEDINGS AT THE MEETING.

Manor of }
in the County of }

Proceedings of a meeting of the lord [*or lords*] and tenants of the said manor, held at, &c., on, &c., for the purposes of, &c., [*as in notice*]. At this meeting were present in person, &c. [*state the names of the lords and tenants present, distinguishing them*] and by their agents, &c. [*stating the parties and their respective agents, if any.*]

A.—*Commencement and appointment of chairman.* As to legal mode of appointing a chairman, see s. 16.—The lord [*or lords*] and tenants present at this meeting elected A. B. to be chairman, and agreeably with the provisions of the said act, the chairman did proceed to ascertain the number and interest of the lord [*or lords*] and tenants present in person or by their agents, and computing as directed by the said act, the lord [*or lords*] so present appeared to be interested to the whole extent of the value, [*or to the extent of three-fourths of the value*] of the said manor, and the tenants so present appeared to equal in number three-fourths of the tenants of the said manor, and in interest three-fourths in value as required by the said act.

B.—*Adjournment, see s. 18.*—The consideration of the agreement proposed by the aforesaid notice to be made was entered upon, but it being desired by a majority in number of the persons attending this meeting in person or by attorney, as aforesaid, the chairman did adjourn the meeting to day, the day of , to be then holden at, &c., at the hour of, &c., and did declare the time and place to which such adjournment was made. And notice of such adjourned meeting was made and given under the hand of the said chairman, and was affixed in a conspicuous place on the outside of the building in which the said meeting was held, and a duplicate of such notice was in like manner made, for the purpose of being advertised agreeably with the provisions of the said act.

Note.—When a meeting is adjourned, it must be recollected that it is not sufficient for the chairman to sign a minute of such adjournment, and then leave the chair. He must also sign the notices of such adjournment, which are to be dealt with as directed by sect. 18, or all the proceedings will fall to the ground.

C.—Notice of Adjournment.

Manor of }
in the County of }

I, [A. B.] having been duly elected chairman of the meeting [or adjourned meeting] held on the day of 18, at, &c. for the purpose of making an agreement, &c., [see notice of original meeting] do hereby give notice that in compliance with the desire of the majority in number of the persons attending such meeting in person or by attorney, I do adjourn the said meeting to day the day of 18

Dated this day of 18
(Signed) A. B. Chairman.

D.—Proceedings at Adjourned Meetings.

Manor of }
in the County of }

Proceedings of an adjourned meeting of the lord [or lords] and tenants of the said manor, held at, &c., for the purpose of, &c. [as in notice]. [State the persons present, the election of chairman, and the ascertaining that a sufficient proportion were present, as at an original meeting.]

E.—Minute as the basis of an agreement for commutation.—At this meeting, the lord [or lords] and tenants present thereat, and such tenants being not less in number than three-fourths of the tenants of the said manor, and the interest of the lord [or lords] and of the tenants so present in the manor and lands respectively, not being less than three-fourths of the interest in the value thereof respectively, computing the interest of the tenant as in the said act is provided, did proceed to make an agreement as hereinafter is expressed for the commutation of the rents, fines, and heriots, from the 1st day of January next following the final confirmation of apportionment, as by the said act provided, to become due in respect of the lands holden of the said manor, and of the lord's rights in timber, [also it was expressly agreed that such commutation should extend to rights in mines and minerals.]

At a rent-charge and nominal fines.—And it was further agreed, that such commutation should be effected in consideration of an annual sum by way of a rent-charge, and of a fixed fine of 5s. to be paid on death or alienation in respect of every tenement holden of the said manor.

Entire rent-charge to be apportioned.—And it was further agreed, that such rent-charge should be the sum of * pounds, but to be from time to time variable according to the price of corn, as in the said act mentioned; such entire rent-charge to be apportioned between the tenants of the said manor by valuers as in the said act provided, and the lord's rights

to remain as at present until such rent-charge should commence.

Rent-charge to be subject to increase and diminution by valuers.—And it was further agreed, that such sum by way of rent-charge should be subject to increase or diminution by the valuers to be appointed in the making such apportionments to any proportion not exceeding per cent, if such valuers should find that the annual value of the lands copyhold of the said manor should exceed or be under the sum of pounds, but the lord is to bear no part of the expense of the valuation, or of other charge by the valuers under this power given to them.

Amount of rent-charge to be fixed by valuers.—And it was further agreed, that the amount of such annual sum or rent-charge to be paid to the lord [or lords] should be fixed by the valuers hereinafter appointed, or their umpire to be appointed agreeably with the provisions of the said act, and to be variable according to the price of corn as in the said act mentioned, and to be apportioned between the tenants of the said manor by the said valuers or umpire.

Net rent-charge in respect of fines, &c. may be postponed till next act, &c.—Also, that so much of the rent-charge to be apportioned for the lands of any tenant as should be in lieu of fines, or other manorial rights, to which such tenant would not be liable hereafter during his tenancy, should not commence until the period of the next act or event on which a fine or such other manorial rights would have become payable or due, and that the amount of such rent-charge should then be increased accordingly; the amount of increased rent-charge to be fixed by the copyhold commissioners.

[These forms will vary according to the particular circumstances of each case.]

F.—Appointment of valuers under s. 24.—Also at this meeting of, &c. and of, &c. were appointed valuers for the purposes of the said commutation, as directed by the said act, the votes on such appointment appearing in the paper marked hereunto annexed.

[To be signed by all the parties present in person or by attorney]

[No appointment of valuers will be valid unless the agreement has been, or shall be executed by persons having sufficient interest.]

Note. It should be remembered that the whole of the minute is only the basis of an agreement, and when such a minute has been made, great care must be taken legally to adjourn the meeting to some future day when a formal agreement may be executed, either fully or provisionally. The first signature to every formal agreement must be affixed at a meeting, and if after framing a minute the parties separate without adjourning, a fresh meeting must be called by notice and advertisement, and all the proceedings gone through de novo.]

[To be continued.]

* This will be a variable corn rent, see s. 36. If the rent-charge shall not exceed 20s. it will not vary according to the price of corn, s. 36.

POINTS IN COMMON LAW PRACTICE, BY QUESTION AND ANSWER. No. VII.

WITNESSES.—See p. 180, *ante*.

- 119, 120. By rule of Hil. 4 W. 4, R. 1, pl. 20, either party may give notice to the other, in the form annexed to the rule, of his intention to adduce in evidence any written or printed documents; and unless the adverse party shall consent within forty-eight hours to make the admission, the party requiring it, may call on the other by summons to shew cause why he should not consent to such admission, or in case of refusal, be subject to pay the costs of proof. The judge may make an order that the costs of proving any document shall be paid by the party so required, whatever may be the result of the cause. No costs of proving any document shall be allowed unless the party shall have given such notice, and the adverse party shall have refused or neglected to make such admission, or the judge shall have indorsed upon the summons that he does not think it reasonable to require it.
121. By the same rule of Court the above proceedings must be taken after plea pleaded, and a reasonable time before trial; and the judge may give time to the other party for inquiry on examination of the documents intended to be offered in evidence, and impose such terms as he shall think fit.
122. Where the witnesses reside within any of the foreign dominions of her Majesty, the application should be for a *mandamus*, to be addressed to the Court there, and to whom power is given by the second section of the stat. 1 W. 4, c. 22, to compel the attendance of the witnesses to be examined.
123. The affidavit necessary to support the application relating to such witnesses must state the nature of the issue, and that the proposed witnesses are material and necessary. *Weekes v. Paul*, 6 Dowl. 462.
124. A defendant applying to examine witnesses is in some cases required to pay the money into Court, or to have the commission returned within a specified time. *Dalton v. Lloyd*, 1 Gale, 102; *Shovey v. Shebbett*, 1 Tyr. 505.
125. It is in the discretion of the Court to order an examination to be taken *videlicet*. *Pole v. Rogers*, 5 Dowl. 632.
126. Where witnesses reside in this country, and are expected to go abroad before the trial, or are in such a state of indisposition or infirmity as renders it improbable they can attend the trial, they may be examined under a judge's order or rule of Court. *Abraham v. Newton*, 8 Bing. 274; *Pond v. Dimes*, 3 Moo. & Scott, 161.
127. When an order has been made for the examination of witnesses, the Court or a judge may order the attendance of the witnesses, and wilful disobedience will be deemed a contempt of Court. 1 W. 4, c. 22, s. 5.
128. In case documents are in the hands of a third person, a *subpoena duces tecum* must be issued, and a copy served on the witnesses. *Davis v. Lovell*, 7 Dowl. 178.
129. By 1 W. 4, c. 22, s. 10, no examination or deposition to be taken by virtue of that act shall be read in evidence at any trial without the consent of the party against whom the same may be offered, unless the examinor or deponent is beyond the jurisdiction of the Court, or dead, or unable, from permanent sickness or infirmity, to attend the trial; and no depositions can be received as evidence unless the party to be affected by them has cross-examined the deponents, or has been legally called upon, and had the opportunity to do so. 2 Stark. Ev. 264; *Attorney General v. Davison*, Macl. & Y. 160; *Cazenove v. Vaughan*, 1 M. & S. 4.
130. By the same act, sect. 3, the costs of every writ or commission, and of the proceedings thereon, are in the discretion of the Court; and by sect. 9 the costs of every rule or order to be made for the examination of witnesses, and of the proceedings thereupon, shall be costs in the cause, unless otherwise directed, either by the judge making such rule or order, or by the judge before whom the cause may be tried, or by the court.
131. Where a document required to be produced is in the possession of a party in the cause, a notice to produce must be served, if such party be plaintiff or defendant, but if one defendant requires a document in the hands of another defendant, the latter should be served with a *subpoena duces tecum*. *Colley v. Smith*, 4 Bing. N. C. 285.
132. It is not necessary to give a notice to produce, where the pleadings inform the party that he is charged with the possession of the instrument, as in trover for a bill of exchange. *How v. Hall*, 14 East, 274; *Scott v. Jones*, 4 T. R. 865. Nor need the production be required of the notice of dishonor against a drawer or indorser. *Swain v. Lewis*, 2 C. M. & R. 261. But where the bill is not the subject-matter of the action, a notice must be given. *Lavanze v. Palmer*, M. & M. 31. An attorney's bill, in an action brought upon it, may be given in evidence without a notice to produce. *Colling v. Treweek*, 6 B. & C. 394; but it will not be sufficient to read the different items of an attorney's bill from a book; *Phillipson v. Chase*, 2 Camp. 110. Yet it is not necessary that the witness should have read both the copy and the original; it is sufficient that he compared the one with the other as read to him. *Robt v. Dart*, 2 Taunt. 52; *Fyson v. Kempe*, C. & P. 71.
133. A notice to produce, in order to let in secondary evidence, will be sufficient, if served on the attorney of the party; but it is prudent to serve a copy on the party himself, and on the town agent, if any. *Houseman v. Roberts*, 5 C. & P. 94.
134. A subpoena cannot be effectually served on a witness in Scotland or Ireland, to com-

- pel his attendance in England. 11 G. 4, c. 70, s. 13.
135. A subpoena must be served a reasonable time before the trial. *Hammond v. Stewart*, 1 Str. 510.
136. A subpoena may be served at any hour of the day or night.
137. A subpoena cannot, it seems, be served on a Sunday.
138. It is not necessary, though usual, to tender any money to a witness residing in town to attend a town cause. *Jacob v. Hingate*, 3 Dowl. P. C. 466.
139. It is necessary to pay or tender a sufficient sum of money to cover the reasonable expenses of the witness in going to, staying at, and returning from the place of trial. *Ashton v. Haigh*, 2 Chit. 201; *Fuller v. Prentice*, 1 H. Bl. 49.

ON
LIMITATIONS TO SEPARATE USE.

To the Editor of the Legal Observer.

Sir,

NOTWITHSTANDING the able articles which have already appeared at different times in your valuable periodical on the subject of separate use, one of your correspondents is clearly labouring under a misapprehension of the principle upon which the judgments of Lord Cottenham, in the cases of *Tullett v. Armstrong*, 19 L. O. 263, and *Newland v. Paynter*, 4 Mylne & C. 417, are based. The former of those cases is decisive, and places the subject in a very clear point of view. In addition to this, we may safely say that there is no probability of the law, as laid down in the excellent judgment in that case, being called in question by any Judge or authority in future.

Your correspondent M. W., whose communications upon this subject are to be found in L. O. Vol. 19, p. 408, and p. 202, *anté*, seems to forget that *separate use* and *restraint upon anticipation* are creatures of equity, and therefore require *equitable principles* and *equitable arguments* to sustain them. He imagines that a *contract* on the part of the husband must at least be implied, in order to give effect to the words creating the trust for separate use.

Now, Sir, with great deference, I must beg to differ from this opinion, and for this simple reason, that as equity supports a gift to the separate use of a woman, so as to entitle her to an exclusive enjoyment during her coverture, on distinct principles of its own, a man marrying a woman with property so circumstanced is, in the words of the Lord Chancellor in *Newlands v. Paynter*, considered as "adopting the property in the state in which he finds it, and bound by equity not to disturb it."

There would have been some force in the observations of your correspondent if *equity* had no peculiar jurisdiction in cases of this sort; but it must be remembered, that any implied or express contract on the part of the husband or wife could not *then* have rendered a separate use clause of the slightest avail.

In *Newton v. Reid*, 4 Sim. 141, a testator gave a sum of money for the separate use of his daughter, a feme sole, and declared that she should not be at liberty to sell or dispose of it, and if she attempted so to do, that such sale should be void. The daughter afterwards married. The Vice Chancellor held that the restraint on alienation was void, there being no gift over. Nothing can be clearer than that the common rules of law had no proper application to this case, and that the equitable doctrine, which ought to have governed, must have been totally forgotten.

It is, however, conceived that the judgment of the Lord Chancellor in the case of *Tullett v. Armstrong* is a great and sound judgment, and has effectually exposed the fallacies which are associated especially with the cases of *Newton v. Reid*, and *Massey v. Parker*, 2 Myl. & K. 141. A very few passages of the judgment in that case will suffice to explain the views of his Lordship with respect to the *contract* of your correspondent, and to the subject generally. He says, "Putting the title of the wife upon the assent of the husband, assumes that, but for such assent, it would not exist. It abandons the idea of the old separate estate continuing through the subsequent coverture, and supposes a new separate estate to arise from the act of the husband. If the title of the wife were to rest upon that supposition, I fear that the remedy would be very inadequate, and that questions would constantly arise as to how far the circumstances of each case would afford evidence of assent, or raise this equity against the husband. After the most anxious consideration, I have come to the conclusion that the jurisdiction which this Court has assumed in similar cases, justifies it in extending it to the protection of the separate estate with its qualifications and restrictions attached to it, throughout a subsequent coverture. When this Court first established the separate estate, it violated the laws of property as between husband and wife; but it was thought beneficial, and it prevailed. It being once settled that a wife might enjoy separate estate as a feme sole, the laws of property attached to this new estate; and it was found, as part of such law, that the power of alienation belonged to the wife, and was destructive of the security intended for it. Equity again interfered, and by another violation of the laws of property, supported the validity of the prohibition against alienation."

R. N. B.

NOTES OF THE WEEK.

NEW QUEEN'S COUNSEL.

William Whately, Esq.
Richard Godson, Esq.
Sutton Sharpe, Esq.
Charles James Knowles, Esq.
Matthew Talbot Baines, Esq.
Charles Austin, Esq. (Pat. Prec.)
The Honourable J. Stuart Wortley.

NEW SERJEANT.

John Vincent Thompson.

SUPERIOR COURTS.

Lord Chancellor's Court.

BANKRUPTCY.—SPECIAL CASE.

The Lord Chancellor has no jurisdiction on a special case from the Court of Review, unless it contains a question of law or of equity, or of the admissibility of evidence; and no such question is raised by a case which states such facts only as a judge would leave to a jury to draw a conclusion from them.

This was a special case from the Court of Review, granted upon the petition of Messrs. Jackson & Co., merchants in the United States of America.

Mr. Bethell, for the Messrs. Jackson, stated the circumstances, which may be understood from the following abstract of the case:—The case stated, among other things, that the petitioners claimed a debt of 10,410*l.* under the joint fiat issued against Warwick and Cleggett, and the proof was admitted as the separate debt of William Sidney Warwick; but upon petition by the assignees, alleging that the debt was a joint debt, the proof was expunged; that on a petition of rehearing, presented by Messrs. Jackson & Co., the following facts were found by the Court on the hearing thereof, viz.: In June, 1836, William Sidney Warwick, then a sole trader in London, wrote a letter to the petitioners as follows: "I hereby open a credit with you, in favor of Messrs. A. & J. Warwick, merchants in America, for 100,000 dollars; and their draft to that extent you will please to honour; and your valuations on me in reimbursement shall meet with due protection, &c. You may reimburse yourselves on me at three or four months sight, or sixty days, as may be most agreeable to yourselves." That the petitioners acceded to that proposal, and accordingly accepted three bills, drawn on them by A. & J. Warwick, one at ninety days from the 15th of August, and two dated respectively the 1st of September, and at the same number of days, for sums amounting together to 50,000 dollars. That on the 1st of October W. S. Warwick, (having just entered into partnership with Mr. Cleggett), wrote to the petitioners as follows: "I beg you will consider all credits, &c. now in force from me, as extending to the firm of Warwick and Cleggett;" and on the 6th of October Messrs Warwick and Cleggett wrote a similar letter to the petitioners, who received both these letters before any of the said bills came to maturity. The petitioners paid the bills as they became due, and drew five bills of equal amount on Warwick and Cleggett, who accepted the same, and were declared bankrupts before they were due. The Court of Review held upon these facts that the consideration for the debt in question was money paid to the use of Warwick and Cleggett at their joint request, and that it never was the separate debt of W. S. Warwick, nor was considered such by the petitioners until after Warwick and Cleggett became bankrupts.

That Court accordingly confirmed its former order for expunging the proof against W. S. Warwick alone.

Mr. Bethell submitted upon these facts that the credit was given to W. S. Warwick. The petitioners, upon his letter in June, 1836, consented to the proposal therein contained, and accordingly accepted the drafts of the Messrs. Warwick, of America, before they had any advice of the partnership of Mr. W. S. Warwick with Mr. Cleggett. The contract was in fact concluded before that advice reached the petitioner, and it could not be changed by their deciding on Warwick and Cleggett in place of Warwick, for the amount of these drafts. The subsequent transactions did not alter the character of the contract, or take away from the petitioners their right to claim on the estate of W. S. Warwick.

Mr. Lee, for the assignees of W. S. Warwick, objected to the hearing of the case. The Court had no jurisdiction over the case; it contained no matter of "law or equity," nor of a "refusal or admission of evidence," to which matters alone the appeal to this Court was limited by the third section of the act of the 1 & 2 W. 4, c. 56, which took away the jurisdiction of this Court in bankruptcy, except in cases involving these questions.

Mr. Bethell contended that the case contained important questions of law. It was a question of importance and of great legal difficulty, whether the liability to the amount of the drafts of A. & J. Warwick on the petitioners attached on Mr. W. S. Warwick or on Warwick and Cleggett.

The Lord Chancellor.—It is clearly a question of fact, whether the credit was given to W. S. Warwick, or to him and Cleggett jointly. That was a question to be inquired into in the Court below, and that Court must exercise their judgment on that fact. Where questions of law and fact are mixed together, it may be sometimes hard to say where there was more of one than of the other. This was not such a case. The question was, whether the obligation to pay the debt lay on Warwick alone, or on Warwick and Cleggett. This is not like a question of construction of an instrument, but a matter of fact in the correspondence between these parties. The whole contract is contained in the three letters set forth in the case, and they would form a question of fact for a jury to draw an inference from. The question appears to be purely a question of fact, and which a Judge might properly leave to a jury. The question was, credit or not; that is whether two were substituted instead of one to the liability to the petitioners; and that was a question that ought not to be brought to be decided here, the act of parliament saying that an appeal lay to this Court only in questions of law or of equity, or of evidence, none of which was raised by this case. His Lordship stated, from the special case, the three letters above stated, and observing that to the last of them, proposing to transfer the credit of Warwick to Warwick and Cleggett, no objection was made by the petitioners; but they assented to the pro-

posed arrangement, which was proved by the fact—the most important in the whole transaction—that the petitioners, after being so advised, drew bills on Warwick and Cleggett for reimbursing themselves for the advances they had made to the Messrs. Warwick of America. That act implied their assent to the proposition that Warwick and Cleggett should stand in the place of W. S. Warwick.

The petition of appeal was dismissed with costs.

In re Warwick and Cleggett, Ex parte Jackson.—At Westminster, June 9th, 1841.

Rolls.

PRACTICE.—DISMISSAL OF BILL.—COSTS.

On an application for the dismissal of a bill, if circumstances are shown to induce the Court to suspect collusion between the party moving and a defendant who has not put in his answer, no order will be made, and if the plaintiff's account is also not satisfactory, the costs of the motion will be costs in the cause.

In this case the bill was filed for discovery, and to stay proceedings in an action which had been commenced against the plaintiff for recovery of a bill of exchange, which as he alleged had been accepted by him for a particular purpose, and had been improperly negotiated. There were three defendants, viz. Peters, the party to whom the bill was originally delivered; Carrol, the party to whom it had been indorsed, and Hamburger, the present holder, who had brought the action. The bill was filed in December, 1840, and the two last defendants put in their answers on the 10th of January last, but Peters had not yet answered. A motion was now made on behalf of the defendant Hamburger to dismiss for want of prosecution.

Temple and Freeling, in support of the motion, said the excuse made by the plaintiff for not having obtained the answer of Peters, was that he had been unable to serve him with a subpoena; but it was clear he had not used that due diligence which the Court required, and therefore the defendant was entitled to a dismissal. The solicitor had sworn that Peters was residing in the house of Hamburger at the time the bill was filed, and that he believed the plaintiff knew it, and this had not been denied by the plaintiff, so that it was evident the delay was created by himself. He might also have taken the bill *pro confesso* and gone to a hearing.

The *Master of the Rolls*.—Discovery would not be obtained by taking the bill *pro confesso*.

Pemberton, for the plaintiff, contended that it was evidently Peter's action, and he was kept out of the way by the other defendants to prevent the plaintiff from obtaining his answer. Application had been made by the plaintiff to Hamburger's solicitors for his (Peter's) address, when they first gave him one place, and subsequently another, at both of which places he had caused inquiry to be made without success.

• plaintiff also swore that he had caused

diligent search to be made for Peters, who he believed was secreting himself to avoid service of the process of the Court.

The *Master of the Rolls* said, the defendant was entitled to the order as a matter of course unless there were circumstances to take it out of the general rule. He felt satisfied the plaintiff could not have served Peters after the 26th December, and he was not without strong suspicion that there was some collusion between Peters and the other defendants. Still the plaintiff's affidavit was not satisfactory, and there was a complete mystery over the whole proceedings. Under these circumstances the motion must be dismissed, and the costs of it be costs in the cause.

Pinkus v. Hamburger and others, May 28th, 1841.

Queen's Bench.

[Before the four Judges.]

CONVICTION, WHEN BAD.

In a conviction under a statute which required an offence to be prosecuted within three months after it had been committed, it was stated that on the 12th of June, in the 3d year of Victoria, the defendant was duly convicted in pursuance of the act 39 Geo. 3, for that on the 7th day of June, in the "year aforesaid:" Held, that the "year aforesaid" must refer to the year last mentioned, and that the conviction was therefore bad.

In this case the justices of Manchester had, in obedience to a *certiorari* from this Court, returned a conviction made by them under the provisions of the 39 Geo. 3, c. 79, the act for the more effectual suppression of societies established for seditious and treasonable purposes. By the 15th section of that statute, it was enacted "that every house, room, &c. in which any lecture or discourse shall be publicly delivered for the purpose of raising or collecting money from the persons admitted, or to which any person shall be admitted on payment of money or by any ticket delivered in consideration of money, &c., shall be deemed a disorderly house, or place, &c. within the meaning of the 36 Geo. 3, unless the same shall have been previously licensed in manner hereinafter mentioned; and every person who shall collect, or receive, &c., any money in respect of the admission of any person, knowing such house, room, &c., to be opened or used for any such purposes as aforesaid, shall for every such offence, forfeit the sum of twenty pounds." The 34th section declared "that no person shall be prosecuted, &c., for any penalty imposed by this act unless such prosecution shall be commenced within three calendar months next after such penalty shall have been incurred." The act gave certain forms of proceedings and convictions. The defendant was summoned before two justices of Manchester, on a charge of having acted as door-keeper, and taken money as such at the Hall of Science in Manchester, the

same not being a place duly licensed, on the occasion of a lecture being delivered there, "on the formation of a character." The defendant was convicted, and the conviction stated "that on the 12th day of June, in the 3d year of the reign of our Sovereign Lady Victoria, &c., Isaac Higginbottom, of Manchester, &c., is duly convicted before us, in pursuance of an act of the 39th year of the reign of King Geo. 3, entitled, &c., for that on the 7th day of June in the year aforesaid, he did, &c." There were five objections to this conviction; but, as the judgment was confined to one, it will not be necessary to repeat the others here. That one objection was, that it did not appear by the record of the conviction that the prisoner was prosecuted within three calendar months after the offence committed, according to the provisions of the 34th section.

Mr. Cresswell, in support of the conviction.—In the first place, this conviction follows the form given in the statute, and must therefore be correct, for the legislature itself has declared the form of words to be used on an occasion like the present. In the next place, the dates are stated with sufficient clearness on the face of the conviction. The words are that "on the 12th day of June, in the 3d year of the reign," &c. the defendant "is convicted for that he on the 7th day of June in the year aforesaid." This statement of time clearly shews that the conviction took place within a few days after the offence committed, and therefore the allegation that it was within three months afterwards is unnecessary.

Mr. J. P. Cobbett, in support of the rule.—The date of the offence is so stated in the conviction that it seems to be the 7th day of June in the 39th year of the reign of Geo. 3, for the "year aforesaid" must refer, grammatically speaking, to the year mentioned in the part of the sentence immediately preceding that in which that sentence is used. If so, then this conviction shews that the alleged offence was committed a great many years ago, and the conviction is therefore bad. But, at all events, the date is uncertain, and therefore the conviction is bad, for there should be even greater certainty in a summary conviction than in an indictment. Now this statement would be clearly defective there. In an indictment alleging a dwelling-house to be "situated at the parish aforesaid," the parish last mentioned was held to be intended. *The King v. Richards*.^a If an indictment refers with equal uncertainty to two counties, it is void. *Elnor's case*.^b

Per Curiam.—The objection is fatal. The conviction must be quashed.

Rule absolute.—*The Queen v. Higginbottom*, T. T. 1841. Q. B. F. J.

Queen's Bench Practice Court.

ATTORNEY AND CLIENT.—STEWARD.—LORD OF MANOR.

Where a client paid to his attorney certain money in his character of steward of a manor, the Court would not compel him to refund that money on a summary application for that purpose.

In this case the affidavit disclosed that in a particular manor the amount of fines due to the lord was uncertain. A number of persons were about to purchase certain land in the manor for building. It was agreed between the lord and those parties that, so far as that land was concerned, a certain sum should be taken in lieu of the fines. The steward of the manor, who was also an attorney, acted on behalf of the purchasers in this transaction. On settling it, he charged a sum of 50*l.* for costs, and a sum of 150*l.* for fees alleged to have been lost by him in the way of fees in consequence of the arrangement between the parties and the lord. This sum was accordingly paid, as well as the costs. Subsequently, on communication with the lord, it was discovered that the steward had no right to this supposed compensation for fees. On receiving this information, an application was made to the steward to refund the 150*l.* This he refused to do, and set the parties at defiance.

Mr. Chambers now applied for a rule to shew cause why the attorney should not refund the money he had so improperly received. It was true that he did not receive this money in the character of an attorney, but he was acting as attorney at the time he received it for the party who now claimed to have it restored to him.

Wightman, J., thought, that as the money had been received by the party applied against in the character of steward, but not as attorney, the mere fact of his being the attorney for the applicant in the transaction out of which the claim arose, did not authorize the Court to interfere by summary proceeding. No rule could be granted.

Rule refused.—*Ex parte Faith and another*, T. T. 1841. Q. B. P. C.

Exchequer of Pleas.

JUDGE'S ORDERS.—CONSENT.—COGNOVIT.—1 & 2 Vic. c. 110, s. 9.

If a consent is given to a Judge's order being made for judgment and execution, it is not a case within the 1 & 2 Vic. c. 110, s. 9, although neither the defendant nor his attorney attends before the Judge at the time of the order being made.

In this case, an order for judgment and execution was made by consent by a learned Judge at Chambers, no attorney attending at chambers on behalf of the defendant at the time when the consent was given.

Fisk moved to set aside this order, on the ground that an attorney not attending on behalf of the defendant, rendered the order void

^a M. & Rob. 177.

^b Cro. Eliz. 184.

within the meaning of the 1 & 2 Vict. c. 110, s. 9. It was true that such orders were not specifically mentioned in the act, but if they were not considered within the meaning and spirit of it, it could always be evaded in this manner. It was, in effect, a *cognovit*.

A rule *nisi* was granted, and afterwards

Byles appeared to shew cause, and produced an affidavit, wherein it was sworn that the defendant had attended in person before the Judge, and given his consent to the order being made. It was when this consent was given that the order was made, and not till then. The case was clearly not within the meaning of the 1 & 2 Vic. c. 110, s. 9.

Purke, B., thought that the suggestion that such a proceeding as the present was an evasion of the 1 & 2 Vic. c. 110, s. 9, did not apply to a case where the party, or his attorney, went before the Judge and consented to the order being made.

Rule discharged.

Bayley, in another case moved to set aside a judgment and execution, which had been founded on a judge's order similar to the one made in the last case, where, however, the consent had been given without either the party or his attorney attending before the judge.

Parke, B., thought that it might be doubtful whether the circumstance of the defendant or his attorney not attending might not distinguish the present from the previous case. It was beneficial for defendants that such orders as this should be upheld. It might be doubtful, however, whether this did not amount to an evasion of the 1 & 2 Vict. c. 110, s. 9. He therefore took time to consider.

Cur. ad. vult.

Parke, B., on a subsequent day stated that he had consulted his learned brothers, and they concurred with him in opinion that there ought to be no rule granted.

Rule refused.—*Braine v. Manton*, T. T. 1841. Exch.

MISCELLANEA.

BURKE'S OPINIONS.

Circumstantial Evidence.—A presumption, which necessarily arises from circumstances, is very often more convincing and more satisfactory than any other kind of evidence, because it is not within the reach and compass of human abilities to invent a train of circumstances which shall be so connected together as to amount to a proof of guilt, without affording opportunities of contradicting a great part, if not all, of these circumstances. But if the circumstances are such as, when laid together, bring conviction to your minds, it is then fully equal, if not as I told you before, more convincing than positive evidence. 4 vol. 248.

The non-disputations.—The man who once surrendered any one of his rights, merely because to defend it might involve him in a dispute, would soon have no rights left to defend.

3 vol. 511.; for others would dispute with him to have the benefit of his fears.

Natural rights.—What were the rights of man previous to his entering into a state of society? whether they were paramount to or inferior to social rights, he neither knew nor cared; man he had found in society, and that man he looked at; he knew nothing of any other man, nor could he argue any of his rights. 4 vol. 51.

Every kind of government, whatever may be its organization or structure, implied or required that a man should surrender part of his *natural rights* to obtain those that belong to society; in a word, that he should forego part of his liberty for the security of the remainder. 4 vol. 131.

Advocacy.—The true skill of an advocate was to put forward the strong part of his client's case, and gloss over or hide the weak. 4 vol. 102.

Law.—It was a law! and laws always infringe in some respect on *natural liberty*, as commanding something to be done or something to be avoided. Every law that was made took away something from the portion of liberty. 4 vol. 136.

Intention.—But gentlemen had asked, was "a bare intent to commit an act" sufficient ground for punishment? To this he would answer yes! the law pronounced it, not indeed that intent which lay concealed in the bosom, but that which was conceived with a resolution to execute it; not the *cogitation*, but the determination. 4 vol. 138.

Secret judgments.—To give judgment privately is to put an end to reports; and to put an end to reports, is to put an end to the law of England. 4 vol. 203. For the judges are not merely appointed to inflict punishment on transgressors, but to assist the public with explanations in such cases as prevent similar offences.

The spirit and the letter.—If ever there was a case in which "the letter killeth, but the spirit giveth life" it is this case.—4 vol. 353.

Geographical morality.—He says that actions if tried in Asia, do not bear the same moral qualities that they would do if tried in Europe:—as if there were a *geographical morality*, and that after you pass the equinoctial line, all British virtues die, as certain animals do. (Suggested by 4 vol. p. 353).

THE EDITOR'S LETTER BOX.

We think that our monthly list of Masters extra in Chancery must be limited to the names which are gazetted. It may be true that the notice in the Gazette is not necessary to the validity of the appointment, but we cannot insert additional names upon mere private authority.

The Letters of A. B. C.; J. W. L.; O—; "One other, &c.," Y. N. N.; and a communication on the "Power of Assignees," have been received.

Some articles have been deferred on account of the space occupied by the forms of the Copyhold Commissioners.

The Legal Observer.

SATURDAY, JULY 17, 1841.

— “Quod magis ad nos
Pertinet, et nescire malum est, agitamus.

HORAT.

NOTES ON RECENT STATUTES.

CONSTRUCTION OF STAT. 2 & 3 VICT. C. 29.

By stat. 6 Geo. 4, c. 16, s. 81, it is enacted that all executions or attachments against the lands and tenements of any bankrupt, levied more than *two calendar months* before the issuing of the commission, shall be valid notwithstanding any prior act of bankruptcy by him committed; but by stat. 2 & 3 Vict. c. 29, s. 1, all executions and attachments against the lands and tenements of a bankrupt, levied before the date and issuing of the fiat, shall be valid notwithstanding any prior act of bankruptcy, provided the person at whose suit the execution or attachment shall have been issued, had no notice. A question has arisen under the latter act, whether if the assignees were appointed before the 2 & 3 Vict. c. 29, came into operation, the act has a retrospective effect. In *Edwards v. Lawley*,^a Mr. Baron Parke said, “if a fiat had issued and assignees had been appointed before the act passed, they would have had at the time of the seizure a vested right to the property of the bankrupt, and it would have been unjust to consider the act as defeating that right, and depriving them of any part of the property. Even if the assignees had not been appointed when the act passed, provided the fiat issued before the date of the act, we should in that case also construe it so as not to defeat the right of the assignees.”

In *Luckin v. Simpson*,^b however, it was expressly decided that the stat. 2 & 3 Vict. c. 29, has a retrospective effect, and applies to cases in which the fiat has issued, and the assignees have been appointed before the passing of that act, and this case appears to have been recognized in the subsequent case of *Nelstrop v. Scarisbrick*,^c in which Lord Abinger, C. B., said, “I go the full length of the decision of the Court of Common Pleas, and do not think it necessary to take the narrow view of the subject suggested. In every case where execution is issued, and neither *mala fides* or any knowledge of the fiat of bankruptcy can be shewn to have existed on the part of the execution creditor, the transaction is protected against the bankruptcy and its consequences; and I think that the doctrine of the Court of Common Pleas, is both right as law, and in accordance with the justice of the case.”

In the last case, however, on the subject, it has been held after a full consideration of all the cases, that the 2 & 3 Vict. c. 29, has not such a retrospective effect as to apply to cases in which a fiat had issued, and the assignees were appointed before the passing of the act. The facts were these; E. Jones on the 4th April, 1840, sued out a writ of *feri facias* against H. Tompkins, for 134l. 13s. which Jones had recovered against Tompkins, and on the 5th of April the goods were taken in execution. On the 4th of May, 1840, the fiat was issued, and Tompkins declared bankrupt on 20th of

^a 6 M. & W. 285; 8 Dowl. 234.
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^b 9 Dowl. 296, n.

^c 6 M. & W. 684; 8 Dowl. 746.

June, and the plaintiffs were appointed assignees on the 21st, and before the act came into operation; and it was contended that as Jones had not at the time of executing the writ of *feri facias* notice of any prior act of bankruptcy committed by Tompkins, that under the statute he had a preferable right to that of the assignees. Lord Abinger, C. B., said, "In this case we retain the opinion which we formerly expressed in *Edwards v. Lawley*, namely, that the act has not a retrospective operation where the title of the assignees has vested before the act passed. *Luckin v. Simpson*, certainly appears to have been a case in which the assignees were appointed before the passing of the act; but the judges of the Court of Common Pleas say, that if their attention had been particularly called to that fact, they should have considered that the vested rights of the assignees ought not to be injured by the act of parliament."

We may, therefore, consider this point as settled, even where the fiat has been issued before the act came into operation.

PRACTICE UNDER LEASE AND RELEASE ACT.

CONSIDERABLE diversity of practice exists in carrying the Lease and Release Act, 4 & 5 Vict. c. 21 (printed *ante*, p. 52) into operation. We are desirous, if possible, to render the practice uniform; and we shall therefore throw out some considerations for coming to the proper construction of the act."

Two questions seem to arise on the act; first, should there be any reference to the act; and next, if any, what that reference should be.

Now, as to the first point, we have considerable doubt whether any reference to the act be absolutely necessary. The words "and shall be expressed to be made in pursuance of this act," were inserted at the suggestion, we believe, of Sir Edward Sugden, to prevent all releases being liable to the lease for a year stamp. If some such words as these had not been inserted, it was thought that *all* releases, although not grounded on a lease for a year, might have been stampable with the lease for-a-year stamp. Where a release, therefore, is stamped with this stamp, we conceive that in strictness the requirements of the act are complied with. The great object of the act is to dispense with the necessity of the lease for a year; and this intention would seem to be evidenced by fixing the double

stamp; and it appears to us that this might be held to be sufficient.

The caution of the conveyancer, however, even if we are right in this, suggests the second question—Is it not prudent to bring the deed within the express letter of the act, by some few words; and if this maxim were not adhered to, what mere skeletons would our usual deeds be? If doubts, aye, even doubts which have long been buried, were not provided against, where would half our usual provisos and covenants be? It seems, therefore, advisable to insert some distinct reference to the act. This has been done already in various ways, of which we may mention four.

1. Now this indenture witnesseth that in pursuance of an act passed in the fourth year of the reign, &c. entitled, &c. he the said *A. B.* hath, &c. granted, &c.

2. Now this indenture witnesseth that in consideration, &c. He, the said *A. B.*, doth in pursuance of an act, &c. entitled, &c. grant, bargain, &c.

3. He, the said *A. B.* Doth by these presents grant, &c. unto the said *C. D.* (in his actual possession now being by virtue of an act passed, &c. entitled, &c.)

4. At the end of the draft, to say: And it is hereby agreed that these presents shall take effect under an act passed, &c. entitled, &c.

Of these we prefer the first, as the simplest and the best; and we would willingly see a uniformity of practice prevail as to its adoption. The ingenuity of our professional friends may of course suggest many other forms.

THE PROPERTY LAWYER.

DONATIO MORTIS CAUSA.

ONE of the requisites to give effect to a *donatio mortis causa* is, that the deceased should, at the time of the delivery, part with all dominion over the subject of the gift. *Hutchins v. Blewitt*, 2 Esp. N. P. C. 663. But there are cases where the nature of the thing will not admit of a corporal delivery; and there, it would seem, that a delivery of the means of coming at the possession, or making use of the thing given will be sufficient. *Ward v. Turner*, 2 Ves. Sen. 441. Thus, the delivery of the key of a trunk has been decided to amount to a delivery of the trunk and its contents. *Jones v. Selby*, Prec. Ch. 300. But in this case the key is not to be considered in the light of a symbol in the name of the thing itself; but the delivery of it has been allowed as the delivery of the possession, because it is the way of coming at the possession, or to make use of the thing. *Ward v. Turner*, *ubi. sup.* *Boss v. Markham*, 7 Taunt. 224. These rules are now to be applied to a case in which *A.* being

is a declining state of health, delivered to B. a locked cash box, and told her to go at his death to his son for the key, and that the box contained money for herself, and entirely at her disposal after he was gone, but that he should want it every three months while he lived. The box was twice delivered to A. by his desire, and he delivered it again to B., and it was in his possession at his death. The box was broken open by B. after A.'s death, and contained a cheque for 500*l.*, drawn by C. in favour of A., and enclosed in a cover endorsed with B.'s name; and the key (which A.'s son had refused to deliver to B.) had a piece of bone attached to it with B.'s name written on it. This was held by the *Vice Chancellor* no *donatio mortis causa*. His judgment was as follows:—"It seems to me that there is quite a mistake in this case, for I do not think that as the matter is stated on the face of this bill, there was any *donatio mortis causa*, or any thing like a *donatio mortis causa*: but, in my opinion, it was nothing more than a gift of that which might happen, at any time, to be in the box; and which gift was always liable, during the lifetime of the testator, to be recalled by him: and therefore, the very essence of a *donatio mortis causa* is wanting in this case. It is stated that, in September 1837, John Dobree deposited the two checks or drafts in the cash box, and that, on or about the 10th of that month, he delivered the box locked up, with the two checks or drafts inclosed therein, to the plaintiff, and, at the time of his so delivering the same, he said to her: "At my death go to my son, and ask him for the key, which will be found in the iron chest. If he will not give up the key, take the box to Vaughan, and he will break it open. It contains money; take care of it. It will make hundreds difference to you. It is for yourself and sister, and entirely at your own disposal after I am gone; but I shall want it from you every three months while I live." The testator appears, either by himself or his son, to have kept possession of the key. The box was twice delivered up to the testator, and re-delivered by him to the plaintiff; but there is nothing stated in this bill which leads one to suppose that, when it was delivered to the plaintiff for the last time, it was not to be held by her upon precisely the same terms as when it was first delivered to her. And it seems to me that the plain inference from the transactions, as they are stated, is that, all along, the testator meant to retain to himself the complete dominion over whatever might be placed in the box; and that it was a mere accident that he happened to die shortly after the third delivery, and did not redemand the box from the plaintiff. My opinion is that, from the beginning to the end, there was nothing more than, to a certain extent, putting the plaintiff in possession of the box, but retaining to himself the absolute power over its contents; and the plaintiff seems to have so understood the transaction; and her acts were in accordance with such understanding. That being so, there was no *donatio mortis causa*, nor any thing in the nature of a

donatio mortis causa in respect of which this Court can act. There was no gift. The plaintiff held the box and its contents in trust for the testator; and if he did not happen to execute that trust in favour of himself, then and in that case only, it was to be for the benefit of the holder; and I apprehend that that is not such a trust as this Court can execute.—*Reddel v. Dobree*, 10 Sim. 244.

CHANGES IN THE LAW,

IN THE LAST SESSION OF PARLIAMENT.

No. XI.

TITHES RECOVERY.

4 & 5 Vict. c. 36.

An act to amend an act of the fifth and sixth years of King William the Fourth, "for the more easy Recovery of Tithes;" and to take away the jurisdiction from the Ecclesiastical Courts in all matters relating to tithes of a certain amount.

[21st June, 1841.]

5 & 6 W. 4, c. 74. *Enactments and provisions of recited act respecting proceedings for the recovery of certain tithes and other ecclesiastical dues extended to all Ecclesiastical Courts in England.*—Whereas it is expedient to extend all the provisions of an act passed in the fifth and sixth years of his late Majesty King William the Fourth, intitled "An Act for the more easy Recovery of Tithes," to all suits in the Ecclesiastical Courts hereafter to be commenced for the recovery of any tithes, oblations, or compositions of or under the yearly value of ten pounds, and of any great or small tithes, moduses, compositions, rates or other ecclesiastical dues or demands whatsoever, of or under the value of fifty pounds, withheld by any quaker: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that from and after the passing of this act all the enactments and provisions of the said recited act passed in the fifth and sixth years of his late Majesty King William the Fourth, respecting suits or other proceedings in any of her Majesty's Courts in England, in respect of tithes, oblations, and compositions of or under the yearly value of ten pounds, and of any great or small tithes, moduses, compositions, rates, or other Ecclesiastical dues or demands whatsoever, of or under the value of fifty pounds, withheld by any quaker, shall extend and be applied to all Ecclesiastical Courts in England.

No. XII.

ECCLESIASTICAL COMMISSIONERS,

4 & 5 Vict. c. 39.

An Act to explain and amend two several acts relating to the Ecclesiastical Commissioners for England. [21st June 1841.]

6 & 7 W. 4, c. 77. 3 & 4 Vict. c. 113. Commissioners may adjourn meetings from Q 2

day to day. 6 & 7 W. 4, c. 77, s. 4. 3 & 4 Vict. c. 113, s. 82. Proviso as to confirming proceedings.

2. Cathedrals in which honorary canonries are founded. 3 & 4 Vict. c. 113, s. 23.

3. Honorary preferment may be held with two benefices. 3 & 4 Vict. c. 113, ss. 23, 51, and shall not be subject to lapse.

4. First fruits and tenths of vacated prebends, &c. 3 & 4 Vict. c. 113, ss. 48, 49, 50, 51, 54.

5. Deans need not hold prebends, 3 & 4 Vict. c. 113, s. 24.

6. Commissioners to have same claims as duly qualified prebendaries. 3 & 4 Vict. c. 113, ss. 49, 50, 51.

7. Provisions of 3 & 4 Vict. c. 113, to apply to other non residentiary prebends, &c., ss. 22, 51, 52, 53.

8. Application of certain monies to parishes of St. Margaret's and St. John's Westminster. 3 & 4 Vict. c. 113, s. 31.

9. Archdeacons may be endowed with benefices. 3 & 4 Vict. c. 113, ss. 34, 35. 1 & 2 Vict. c. 106.

10. The provision in 1 & 2 Vict. c. 106, as to archdeacons holding two benefices, to extend to peculiars.

11. Endowment may be disannexed from one archdeaconry and annexed to another.

12. Further provisions respecting Southwell. 3 & 4 Vict. c. 113, ss. 18, 36, 41.

13. Durham University Trusts. 3 & 4 Vict. c. 113, s. 37. 2 & 3 W. 4, c. 19. (Private.)

14. Saint David's Llandaff, and Brecon revenues. Repeal of 3 & 4 Vict. c. 113, ss. 38, 39, 40.

15. Amendments relating to minor canons. 3 & 4 Vict. c. 113, ss. 44, 45, 46, s. 93.

16. Majority of members to constitute a chapter, 3 & 4 Vict. c. 113, s. 47.

17. Sinecure rectories in private patronage, 3 & 4 Vict. c. 113, s. 48.

18. Disposal of residence houses, 3 & 4 Vict. c. 113, s. 58; 2 & 3 W. 4, c. 10. (Pr.)

19. Correction of error respecting endowments belonging to Lichfield Prebends, 3 & 4 Vict. c. 113, s. 63.

20. Enlarged discretion as to mode of fixing incomes, 3 & 4 Vict. c. 113, ss. 52, 66.

21. Powers of exchange, &c. extended to all corporations sole, 3 & 4 Vict. c. 113, s. 68.

22. Provisions of 3 & 4 Vict. c. 113, s. 73, respecting exchange of advowsons, to authorize exchange by ecclesiastical corporations.

23. Exchanges of advowsons may be made for the purpose of unions, 1 & 2 Vict. c. 105, s. 16.

24. Consent of patrons how to be given, 1 & 2 Vict. c. 106, ss. 125 to 128 inclusive; 3 & 4 Vict. c. 113, ss. 71, 72, 73, 74.

25. Division of corporate revenues at Windsor and Lincoln, 3 & 4 Vict. c. 113, s. 75.

26. Augmentations under 1 & 2 W. 4, c. 45, may be made by all corporations sole; 3 & 4 Vict. c. 113, s. 76; and building land may be let or sold for the purpose.

27. Commissioners may pay agents, &c.

28. Act not to apply to Saint Asaph and Bangor, &c; 5 & 6 W. 4, c. 30; 6 & 7 W. 4, c. 67; 2 & 3 Vict. c. 55.

29. Construction of the terms "lands," &c. Provisions of Tithe Commutation Acts extended to commissioners, 6 & 7 W. 4, c. 71.

30. Powers of 6 & 7 W. 4, c. 77, and 3 & 4 Vict. c. 113, extended to this act.

31. Act may be amended, &c.

The following are the titles of the other acts passed, down to 22nd June:—

Cap. 40. An Act to empower the Commissioners of her majesty's woods to raise money for certain improvements in the metropolis, on the security of the land revenues of the crown within the County of Middlesex and City of London.

[21st June, 1841.]

Cap. 41. An Act to provide for the payment of debts, charges, and incumbrances affecting houses of industry and workhouses, and of advances made, conformably with previous usage, for the lawful purposes of such houses of industry and workhouses, in certain cases in Ireland.

[21st June, 1841.]

Cap. 42. An Act to remove doubts as to the division of the parish of Winterbourne, in the county of Gloucester, into two parishes.

[21st June, 1841.]

Cap. 43. An Act to continue until the thirty-first day of December, one thousand eight hundred and forty-two, and until the end of the then next session of parliament, an Act of the tenth year of king George the Fourth, for providing for the government of his majesty's settlements in Western Australia, on the western coast of New Holland.

[21st June, 1841.]

Cap. 44. An Act to continue until the thirty-first day of December, one thousand eight hundred and forty-two, and from thence until the end of the next ensuing session of parliament, certain acts for providing for the administration of justice in New South Wales and Van Diemen's land, and for the more effectual Government thereof.

[21st June, 1841.]

Cap. 45. An Act to amend an Act passed in the third and fourth years of the reign of his late majesty King William the Fourth, intitled "An Act to amend the Laws relating to Sewers."

[21st June, 1841.]

Cap. 46. An Act to empower the Commissioners for the issue of Exchequer Bills for public works to complete the works authorized to be made by an Act of the sixth and seventh year of his late majesty King William the Fourth, "for improving the Navigation and Harbour of Trilae in the county of Kerry"; and to extend the time for that purpose.

[21st June, 1841.]

Cap. 47. An Act to amend an act of the last session, for continuing and amending the laws for the Relief of Insolvent Debtors in Ireland.

[21st June, 1841.]

Cap. 48. An Act to render certain Municipal Corporations rateable to the Relief of the Poor in certain cases.

[21st June, 1841.]

Cap. 49. An Act to provide for repairing, improving, and rebuilding County Bridges.

[21st June, 1841.]

Cap. 50. An Act to make further provision relative to the returns to be made by banks of the amount of their notes in circulation.

[21st June, 1841.]

Cap. 51. An Act to amend an Act of the third year of King George the Fourth, for regulating Turnpike Roads in England, and also an act of the fifth and sixth years of King William the Fourth, for consolidating the laws relating to highways in England.

[21st June, 1841.]

Cap. 52. An Act to amend an act of the fourth year of her present majesty, intitled An Act for facilitating the Administration of Justice in the Court of Chancery.

[21st June 1841.]

Cap. 53. An Act to apply certain sums of money to the service of the year one thousand eight hundred and forty-one, and to appropriate the supplies granted in this session of parliament.

[22nd June, 1841.]

ADVERSE POSSESSION.

We now proceed to continue the article which we commenced on the above subject in page 164. We shall state the new law according to the same order as we stated the old law.

First, then, as to parties where the claimant proceeds against a party who has expressly acknowledged his title; and secondly, as between parties whose titles are coexistent.

By 3 & 4 W. 4, c. 27, s. 2, it is provided "That, after the 31st day of December 1833, no person shall make an entry or distress, or bring an action to recover any land or rent, but within twenty years next after the time at which the right to make such entry or distress, or to bring such action, shall have first accrued to some person through whom he claims; or if such right shall not have accrued to any person through whom he claims, then within twenty years next after the time at which the right to make such entry or distress, or to bring such action, shall have first accrued to the person making or bringing the same." By s. 13, "That when a younger brother or other relation of the person entitled as heir to the possession or receipt of the profits of any land, or to the receipt of any rent, shall enter into the possession or receipt thereof, such possession or receipt shall not be deemed to be the possession or receipt of or by the person entitled as heir." By s. 14, "That when any acknowledgment of the title of the person entitled to any land or rent shall have been given to him or his agent in writing signed by the person in possession or in receipt of the profits of such land, or in receipt of such rent, then such possession or receipt of or by the person by whom such acknowledgment shall have been given shall be deemed,

according to the meaning of this act, to have been the possession or receipt of or by the person to whom or to whose agent such acknowledgment shall have been given at the time of giving the same, and the right of such last-mentioned person, or any person claiming through him, to make an entry or distress or bring an action to recover such land or rent, shall be deemed to have first accrued at and not before the time at which such acknowledgment, or the last of such acknowledgments, if more than one, was given." And by s. 15, "That when no such acknowledgment as aforesaid shall have been given before the passing of this act, and the possession or receipt of the profits of the land, or the receipt of the rent, shall not at the time of the passing of this act have been adverse to the right or title of the person claiming to be entitled thereto, then such person, or the person claiming through him, may, notwithstanding the period of twenty years herein-before limited shall have expired, make an entry or distress or bring an action to recover such land or interest at any time within five years next after the passing of this act."

On the second section the case of *Nepean v. Doe d. Knight*, 2 Mees. & Wels. 894, is most important, as it decides that the doctrine of non-adverse possession is in general abolished. It was a decision on a writ of error, founded on a bill of exceptions, and was argued in the Exchequer Chamber.

The lessor of the plaintiff claimed as grantee in reversion of a copyhold estate, on the death of Matthew Knight. Matthew Knight went to America in December, 1806, or early in 1807, and the last account that was heard of him was by a letter written by him from Charleston, which was received in England, in May, 1807. The declaration in this cause was served on the 18th January, 1834. At the trial, evidence was given to shew that the defendant came into possession as a purchaser of the interest of George Knight, who held for the life of Matthew Knight.

The question arose whether on the supposition that the defendant came in as a purchaser of George Knight's interest, there had been twenty years adverse possession as against the lessor of the plaintiff. Lord Denman, C. J., in delivering the judgment of the Chamber, said,—

"We are all clearly of opinion that the second and third sections of that act (which came into operation on the 1st of January, 1834, seventeen days before this action was commenced) have done away with the doctrine of non-adverse possession, except in cases falling within the fifteenth section of the act. The question is, whether twenty years have elapsed since the right accrued, whatever be the nature of the possession. The right of entry in this case accrued on the death of Matthew Knight."

Then, as the first and second questions were identical, the learned judge was wrong in putting any distinct and separate question to the jury on the nature of the possession, unless the case be within the fifteenth section."

As the latter part of the decision only applies to the fifteenth section, which is only temporary, no more of it is cited.

Next, as to cases between *landlord and tenant*, it is provided by s. 3:—

"That in the construction of this act, the right to make an entry or distress, or bring an action to recover any land or rent, shall be deemed to have first accrued at such time as hereinafter is mentioned; (that is to say) when the person claiming such land or rent, or some person through whom he claims, shall in respect of the estate or interest claimed, have been in possession or in receipt of the profits of such land, or in receipt of such rent, and shall while entitled thereto have been dispossessed, or have discontinued such possession or receipt, then such right shall be deemed to have first accrued at the time of such dispossession or discontinuance of possession, or at the last time at which any such profits or rents were or was so received; and when the person claiming such land or rent shall claim the estate or interest of some deceased person who shall have continued in such possession or receipt in respect of the same estate or interest until the time of his death, and shall have been the last person entitled to such estate or interest who shall have been in such possession or receipt, then such right shall be deemed to have first accrued at the time of such death; and when the person claiming such land or rent shall claim in respect of an estate or interest in possession, granted, appointed, or otherwise assured by any instrument (other than a will) to him, or some person through whom he claims, by a person being in respect of the same estate or interest in the possession or receipt of the profits of the land, or in receipt of the rent, and no person entitled under such instrument shall have been in such possession or receipt, then such right shall be deemed to have first accrued at the time at which the person claiming as aforesaid, or the person through whom he claims, became entitled to such possession or receipt by virtue of such instrument; and when the estate or interest claimed shall have been an estate or interest in reversion or remainder, or other future estate or interest, and no person shall have obtained the possession or receipt of the profits of such land or the receipt of such rent in respect of such estate or interest, then such right shall be deemed to have first accrued at the time at which such estate or interest became an estate or interest in possession; and when the person claiming such land or rent, or the person through whom he claims, shall have become entitled by reason of any forfeiture or breach of condition, then such right shall be deemed to have first accrued when

such forfeiture was incurred or such condition was broken."

Then, as between *mortgagor and mortgagee*, it is provided by s. 28—

"That when a mortgagee, shall have obtained the possession or receipt of the profits of any land, or the receipt of any rent, comprised in his mortgage, the mortgagor or any person claiming through him, shall not bring a suit to redeem the mortgage but within twenty years next after the time at which the mortgagee obtained such possession or receipt, unless in the mean time an acknowledgment of the title of the mortgagor or of his right of redemption shall have been given to the mortgagor, or some person claiming his estate, or to the agent of such mortgagor or person, in writing signed by the mortgagee or the person claiming through him; and in such case no such suit shall be brought but within twenty years next after the time at which such acknowledgment, or the last of such acknowledgments if more than one, was given; and when there shall be more than one mortgagor, or more than one person claiming through the mortgagor or mortgagors, such acknowledgment, if given to any such mortgagors or persons, or his or their agent, shall be as effectual as if the same had been given to all such mortgagors or persons; but where there shall be more than one mortgagee, or more than one person claiming the estate or interest of the mortgagee or mortgagees, such acknowledgment signed by one or more of such mortgagees or persons, shall be effectual only as against the party or parties signing as aforesaid, and the person or persons claiming any part of the mortgage money, or land, or rent, by, from, or under him or them, and any person or persons entitled to any estate or estates, interest or interests, to take effect after or in defeasance of his or their estate or estates, interest or interests, and shall not operate to give to the mortgagor or mortgagors a right to redeem the mortgage as against the person or persons entitled to any other undivided or divided part of the money, or land, or rent; and where such of the mortgagees or persons aforesaid as shall have given such acknowledgment shall be entitled to a divided part of the land or rent comprised in the mortgage, or some estate or interest therein, and not to any ascertained part of the mortgage money, the mortgagor or mortgagors shall be entitled to redeem the same divided part of the land or rent on payment, with interest, of the part of the mortgage money which shall bear the same proportion to the whole of the mortgage money as the value of such divided part of the land or rent shall bear to the value of the whole of the land or rent comprised in the mortgage."

A curious question may arise on this section in cases where an application is made under the 7 Geo. 2, c. 20, to stay proceedings in actions of ejectment by mortgagee against

mortgagor, on payment of the sum which shall be found due for principal and interest on the mortgage deed. Suppose the mortgagee to have been in possession of a portion of the mortgaged property nearly twenty years, and just before the expiration of twenty years to bring his action of ejectment for the recovery of the remainder. By the time the matter can come before the Master for the purpose of settling the accounts between the parties, twenty years may have expired. The right of the mortgagee to bring his action of ejectment is undoubted, he having brought it within twenty years; but the right of the mortgagor is tolled, more than twenty years having elapsed since he was in possession. In taking the accounts between the parties, is the Master to consider the amount of rents and profits arising from the property of which the mortgagee has been so long in possession? or is he to treat the rights of the mortgagor as gone in every way with respect to the mortgaged property which the mortgagee has had in his possession? If he was bound so to proceed, he would be bound to do great injustice to the mortgagor. But it is conceived to be quite consistent with the provisions of the 3 & 4 W. 4, c. 27, s. 28, that such a course should not be adopted. That section provides that the mortgagor, under such circumstances, shall not be at liberty to redeem the mortgage; but it does not provide that the mortgagee shall not be accountable to the mortgagor in any case where the state of the accounts between them respecting the mortgaged property shall come in question. When such an inquiry is instituted before the Master, the question is not as to the title of the mortgagee as to that particular property for which the ejectment is brought, but the state of the accounts between the mortgagee and mortgagor. Now, during twenty years, the mortgagee must be considered as having been acting as trustee for the mortgagor, in receiving the rents and profits of the property which he has had in possession. And, therefore, in settling the claims which the mortgagee has on the mortgagor, it is reasonable that those rents and profits should be allowed in discharge of the mortgagor. Such a question as this is now pending before the Court of Queen's Bench.

With respect to trustee and *cestui que trust*, it is presumed that the law now depends on the provisions of section 25. The words of it are—

“That when any land or rent shall be vested in a trustee upon any express trust, the right of the *cestui que trust*, or any person claiming through him, to bring a suit against the trustee, or any person claiming through him, to recover such land or rent, shall be deemed to have first accrued, according to the meaning of this act, at and not before the time at which such land or rent shall have been conveyed to a purchaser for a valuable consideration, and shall be deemed to have accrued only as against such purchaser and any person claiming through him.”

Lastly, as between tenants in common, joint-tenants, and coparceners, the provisions of section 12 now state the law. They are—

“That when any one or more of several persons entitled to any land or rent as coparceners, joint-tenants, or tenants in common, shall have been in possession or receipt of the entirety, or more than his or their undivided share or shares of such land or of the profits thereof, or of such rent, for his or their own benefit, or for the benefit of any person or persons other than the person or persons entitled to the other share or shares of the same land or rent, such possession or receipt shall not be deemed to have been the possession or receipt of or by such last-mentioned person or persons or any of them.”

There are several other provisions in the act subsidiary to those which are here set forth; but, with the object which we had in view in writing this article, they are unnecessary to be stated.

ON THE

CHOSSES IN ACTION OF THE WIFE.

PROPERTY falling under the description of choses in action of the wife is defined to be “debts owing to her, rents, legacies, residuary personal estate, money in the funds,” &c. A husband has full power to dispose of the chattels real of his wife, whether her interest in them is immediate or only reversionary—vested, or only contingent—legal, or only equitable; but if he make no disposition of them during the life of his wife, they will go to the survivor.

With regard to the choses in action of the wife, marriage is but a qualified gift to the husband of such property, viz. on condition that he reduces them into possession during the life of his wife. Story, in his admirable Commentaries on Equity Jurisprudence, thus expresses himself: “By marriage the husband clearly acquires an absolute property in all the personal estate of his wife, capable of imme-

diate and tangible possession. But if it is such as cannot be reduced into possession except by an action at law or a suit in equity, he has only a qualified interest therein, such as will enable him to make it an absolute interest by reducing it into possession." Story Eq. Jur. Vol. 2, p. 583. If the husband survive his wife, he will be entitled as her administrator to all her choses in action which had not been reduced into possession during her life.

Reduction into possession, so as to defeat the title of the wife by survivorship, may be either *actual* or *constructive*—it is *actual* where the possession of the property is actually acquired or recovered by the husband; and *constructive* where the choses in action of the wife are assigned by the husband for a valuable consideration to a stranger. The *reversionary* choses in action of the wife, whether they be of legal or merely equitable cognizance, may be assigned by the husband; but such assignments, although they may be made for a valuable consideration, will be of no avail so as to defeat the title of the wife by survivorship, unless her choses in action are capable of being reduced into possession during the continuance of the marriage. Thus Lord Chancellor Lyndhurst, in the case of *Honner v. Morton*, said, "At law, the choses in action of the wife belong to her husband, if he reduces them into possession; if he does not reduce them into possession, and dies before his wife, they survive to her. Equity considers the assignment by the husband as amounting to an agreement that he will reduce the property into possession. It likewise considers what a party agrees to do as actually done; and therefore, where the husband has the power of reducing the property into possession, his assignment of the chose in action of the wife will be regarded as a reduction of it into possession. On the other hand, I should also infer, that where the husband has not the power of reducing the choses in action into possession, his assignment does not transfer the property, till, by subsequent events, he comes into the situation of being able to reduce the property into possession; and then his previous assignment will operate on his actual situation, and the property will be transferred. *Honner v. Morton*, 3 Russ. p. 65; *Purdess v. Jackson*, 1 Russ. pp. 1 & 47.

At one time, some doubt was entertained as to the effect of assignment of the *equitable* reversionary choses in action of the wife; but Mr. Roper, after carefully reviewing the cases, remarks: "probably the following proposition may be considered as warranted,—that whenever the nature of the wife's interest is such as the law allows the husband to release it, a Court of Equity will permit him to assign it." Rop. on Husband and Wife, vol. 1, p. 244. Those reversionary choses in action, however, which depend upon a contingency that cannot possibly happen during the life of the husband, are absolutely incapable of being assigned so as to defeat the wife's right by survivorship, and her consent in court would not be taken for the purpose of releasing such interest. *Fraser v. Bailie*, 1 Br. Cha. Ca. 518.

The assignees of a bankrupt husband, stand rather in the situation of the bankrupt himself, than in the character of a common assignee for valuable consideration; for the choses in action of the wife which are not reduced into possession during the life of the husband, will, notwithstanding his bankruptcy, go to his wife as survivor. *Mitford v. Mitford*, 9 Ves. 87; *Guyner v. Wilkinson*, 2 Dick. 491. If the husband is obliged to resort to a Court of Equity to recover his wife's choses in action, the Court will not interfere in his favour without obliging him to make a settlement of a *reasonable proportion* of them upon his wife and children, unless the wife consent that her husband shall receive them exempt from any such obligation, and assignees for value in this respect stand in no better position than the husband himself, 2 P. Will. 639. *Beresford v. Hobson*, 1 Madd. 363. But this equity is only personal to her, so that if she be entitled to an equitable interest, and dies leaving a husband and children, the latter being unprovided for by settlement, and he file a bill to recover such interest, his children cannot oblige him to make a provision for them out of it. Roper on Husband and Wife, p. 263.

This equity of the wife, however, does not extend to legal choses in action, where there is no necessity for resorting to a Court of Equity for the purpose of recovering them.

LAW OF ATTORNEYS.

BANKRUPTCY.—TAXATION.

It appears that upon a petition to retax the bill of a solicitor, the petition need not be served on the assignees, where the application is merely for a re-taxation of the bill; but if the bill has been paid by the assignees, the petition must be served on them.

An order on the solicitor to refund what it shall appear he has been overpaid, cannot be supported on such a petition; unless the bill has been actually paid,

A creditor under the fiat applied for a re-taxation of the solicitor's bill. One only of the solicitors had been served with the petition. This was considered to be a service upon them as solicitors of the assignees, and not personally. The Court ordered the bill to be re-taxed, and that if, upon such re-taxation, it should appear that the solicitors had been overpaid, then that the respondents should refund the difference; and if the bills should be reduced by a less sum than one-sixth, then the petitioner should pay the costs of the application, and of the reference, &c.

Mr. Swinston appeared on behalf of the solicitors, as well as the assignees, to vary the minutes of the order as to refunding,—by confining the condition of refunding to monies improperly paid out of the bankrupt's estate, and cited *Ex parte Wells*, 1 Deac. 69,

Mr. *Anderdon*, in support of the order, referred to *Ex parte Payne*, Mont. 455; *Ex parte Christy*, 3 M. & A. 87; 3 D. & C. 414.

Mr. *Swanston*, in reply, referred to *Ex parte Fosbrook*, 1 Mont. & C. 176; 3 Deac. 686.

Sir *John Cross*.—A great confusion in this case has arisen, merely from this circumstance,—that Mr. *Swanston* was instructed by the attorney, who is agent as well for the solicitors as the assignees under this fiat, to appear only for the assignees, when this petition first came before the Court. To-day, however, he says, that he is instructed to appear for the solicitors also. The question therefore is, whether, having now all parties before us, we can make the order in accordance with the prepared minutes. Whether that be the usual order, or not, it seems difficult to say. The registrar, however, says, that for the last four years, such has been considered to be the usual order. But, supposing it not the usual order, will the court, having now a perfect knowledge of all the circumstances of the case, say that the order was not fit to be made? It has been urged, that the order was only made against the assignees, and not against the solicitors. But in *Ex parte Payne*, Mont. 455, the Vice Chancellor held, that it was not necessary to serve the assignees with a petition of this description. It is abundantly clear to the court, that the attorney who instructed Mr. *Swanston*, is agent both for the solicitors and the assignees, and was authorised to appear for both. He must have known that the assignees were not intended to be served, and that the solicitors were. The order recites, that the solicitors were served; and the registrar would not have drawn up such an order without an affidavit that the solicitors were served. Then, upon the question of refunding,—the order says, that if the solicitors shall appear to have been overpaid, then that they shall refund such surplus to the assignees, to be applied as part of the estate and effects of the bankrupt. It is said that this may be unjust; not that it is so in this particular case; and it is alleged, that the solicitors may have many charges for journeys, and for other matters which might be struck off on taxation, as between the solicitors and the estate. But, supposing that the assignees had employed a solicitor one hundred miles off, and had thus brought a charge upon the estate which ought not to have been incurred;—notwithstanding the officer might strike off these charges for journeys, which the solicitors would be bound to refund to the estate, they would still have a legal claim against the assignees. There does not seem to me to be anything unfair in this; all the object of the order is to protect the estate. With respect to the costs of taxation, it appears, that this court has always been accustomed to order them to be paid, as well as other courts. There is nothing contrary to usage in this; but even if it was not the usage, this court is quite competent to make such an order.

Sir *George Rose*.—In all questions touching the administration of assets in bankruptcy, the assignees should be before the Court. In

the present case, if it turns out that the solicitors have been paid by the assignees, the petitioner could not have stirred one step, without bringing the assignees before the Court. It is different when the order prayed is a simple order for taxation of the solicitor's bill, without any question of refunding. The case before the Vice Chancellor, *Ex parte Payne*, Mont. 455, was nothing more nor less than that. In *Ex parte Fosbrook*, 1 Mont. & C. 176, the minutes of the order shew, that the assignees were before the Court. In this case, it strikes me, that the order is right in directing the solicitors to refund to the estate whatever has been improperly paid to them by the assignees; but then such an order cannot stand, unless the petition is amended, by stating that the bill has been paid by the assignees. *Ex parte Ainsworth*, 1 Mont. Dea. & De G. 227.

After some further discussion between the Court and the counsel, the minutes of the order were, by consent, varied as follows: That, instead of directing the solicitor to refund the amount of any overpayment, and to pay the costs of taxation, if more than one-sixth part was taken off his bill, the Court reserved the further directions on the matter of the petition, and also the costs of the parties of and occasioned by the petition, until after the registrar should have made his certificate; with liberty for either party to apply to the Court.

COPYHOLD ENFRANCHISEMENT.

FORMS OF PROCEDURE UNDER STATUTE
4 & 5 Vict. c. 35.

[Continued from page 218.]

[These forms have just been issued by the Copyhold Commissioners.]

* * * These forms are intended for the guidance of parties availing themselves of the act, but must be varied to suit the particular circumstances of each case.

No. 5.

AGREEMENT FOR COMMUTATION AT RENT-CHARGE, &c.

[It should be remembered that the first signature to all formal agreements must be affixed at a legal meeting, and care must be taken to keep meetings alive by adjournment till such an agreement as that of which the form follows is ripe for signature. Parties will find that they will save time and expense by sending up the draft of the agreement to be examined and corrected at the copyhold commission before it is finally prepared for execution. It should also be remembered, that the agreement, when executed, should be forwarded to the copyhold commissioners.]

Manor of
in the County of }

Articles of agreement in pursuance of an act passed in the fourth and fifth years of the

reign of her present Majesty Queen Victoria, intituled "An Act for the Commutation of certain manorial Rights in respect of Land of Copyhold and Customary Tenure, and in respect of other Lands subject to such Rights, and for facilitating the Enfranchisement of such Lands, and for the Improvement of such Tenure," made [and executed] at a meeting holden [by adjournment] at, &c., on, &c., for the purpose of, &c. [see notice] between of, &c., lord [or lords] of the said manor, of the one part, and the several other persons by whom, or by whose attorney or agent, duly authorized in that behalf, these presents are executed, being tenants of the said manor, not less than three-fourths in number, and in interest not being less than three-fourths in value, computed agreeably with the provisions of the said act, of the other part.

Witness that at the said meeting it hath been, and is agreed upon, by and between all the parties to these presents, to effect a commutation of the rents, fines, and heriots, to become due in respect of the lands holden of the said manor from the 1st day of January next following the final confirmation of apporportionment, as by the said act provided, and also for a commutation of the lord's rights in timber, [and also, by express agreement between the said parties hereto, for commutation of the lord's rights in mines and minerals.]

That such commutation shall be effected in consideration of an annual sum, by way of rent-charge, and of a fixed fine of £s. to be paid on death or alienation in respect of every tenement holden of the said manor.

That such rent-charge shall be the sum of pounds, but to be from time to time, &c. [see Minutes, No. 4, E.]

[For proviso that the same shall be subject to increase or diminution, see also Minutes, No. 4, E., and the like where the amount is to be fixed by the valuers, &c.]

In witness whereof the respective parties hereto, have hereunto set their hands and seals, the day and year first above written.

Parties.	Witnesses.
Names, Residence, and Description.	Signed, sealed, and delivered by the parties whose names are opposite to the names of the respective witnesses, in the presence of
Name, &c. of Attorney.	

No. 6.

STEWARD'S STATEMENT FOR MEETINGS, ETC.

Manor of
in the County of }

A statement of the several tenants of the said manor and of the lands to which they respectively stand admitted for life, or otherwise,

or which they hold subject to fines, heriots, or other manorial rights, and of the amount to which the same lands are rated to the relief of the poor, so far as I can distinguish or estimate the same, and of the amounts received by the lord [or lords] on account of the three last heriots in respect of any such lands, [and of such other information as the Copyhold Commissioners have directed me to furnish, and which I can procure and produce without prejudice to the rights and interests of the lord [or lords] of the said manor.]

The following information is to be given in columns:

1. Names of the tenants.—2. Copyholders, or what class of tenant.—3. Abstract of the description of the lands in the court rolls and in what parishes situated.—4. Explanatory remarks on such descriptions.—5. Total assessment to the poor's-rate of the lands and others assessed therewith.—6. Estimated proportion for copyholds or amount when separately assessed.—7. Subject to fines, heriots, and what other rights.—8. Amount of receipts on account of three last heriots.—9. A blank column for the chairman to bring out the voting value.

I declare the above statement to be correct, so far as I can procure the information required, agreeably with the provisions of the statute directing me to prepare the above statement.

Dated, &c.

(Signed) A. B., steward of the
said manor.

[Tenants should be aware that they will have to pay for this statement if they apply for it (s. 27), and should ascertain whether other tenants have applied. By the same section three tenants must join in the application to the steward, or it may be made by the chairman of any meeting, or by the valuers.]

No. 7.

MINUTE OF A MEETING AT WHICH AN AGREEMENT TO COMMUTE HAS BEEN SIGNED.

Manor of
in the County of }

At this meeting the lord [or lords] and tenants present thereat, such tenants being not less in number than three-fourths of the tenants of the said manor, and the interest of the lord [or lords] and of the tenants so present in the manor and lands respectively, not being less than three-fourths of the interest in the value thereof respectively, computing the interest of the tenants as in the said act is provided, did proceed to make an agreement for the commutation of the rents, fines and heriots, to become due in respect of the lands holden of the said manor, and of the lord's rights in timber, and the said lord [or lords], and the said tenants have duly signed and executed the said agreement.

Dated this

day of

[A. B.] Chairman.

No. 8.

MINUTE OF MEETING AT WHICH A "PROVISIONAL" AGREEMENT TO COMMUTE HAS BEEN SIGNED.

Manor of
in the County of }

At this meeting the lord [or lords] and tenants present thereat did proceed to make a provisional agreement for the commutation of the rents, fines, and heriots, to become due in respect of the lands holden of the said manor, and of the lord's rights in timber, and have duly signed and executed the said agreement.

Dated this day of
[A. B.] Chairman.

No. 9.

AGREEMENT WITH TWO OR MORE TENANTS FOR THE COMMUTATION OF MANORIAL RIGHTS WHEN THE RENT-CHARGE IS NOT APPORTIONED BY THE PARTIES IN THE AGREEMENT, BUT IS LEFT TO BE APPORTIONED BY THE STEWARD.—See s. 52.

Manor of
County of }

Memorandum of agreement made the day of 18 , between A. B., of &c., lord of the said manor, of the first part; C. D., of &c., a tenant of the said manor, of the second part; E. F. of &c., another tenant of the said manor, of the third part, &c. (according to the number of the said tenants.) Witness, that in pursuance of the powers and authorities for that purpose given in and by an Act passed in the fourth and fifth years of the reign of her present Majesty Queen Victoria, intituled, "An Act for the Commutation of certain Manorial Rights in respect of Lands of Copyhold and Customary Tenure, and in respect of other lands subject to such rights, and for facilitating the enfranchisement of such lands, and for the improvement of such Tenure," the said parties above named, lord and tenants of the said manor, to the number of [or being all the tenants of the said manor] [with the consent of the said commissioners under the said act, testified by their signature and seal respectively hereupon written and impressed], do hereby contract and agree for the commutation of the rents, fines, and heriots payable to the said lord in respect of the lands described in the schedule hereunder written (*here specify any other rights which may be the subject of the agreement*), in consideration of a rent-charge to be paid in respect of all the said lands described in the schedule hereunder written, and of a fine certain of the sum of five shillings, to be paid in respect of each and every of the said lands respectively, on the death or alienation of the said several tenants parties hereto. And it is hereby agreed that such rent-charge shall be the sum of pounds,* but shall be

* This will be a variable corn-rent. See s. 35.

variable from time to time according to the price of corn, as in the said act mentioned and provided. And it is hereby agreed, that such rent-charge shall commence from the day of and be respectively payable to the said A. B. [and other the lord and lords, lady and ladies, of the said manor for the time being] half yearly, on the first day of July, and the first day of January, for ever hereafter, and that the first payment shall be made on the day of next ensuing the date hereof. As witness the hands of the said parties the day and year first above written.

THE SCHEDULE ABOVE REFERRED TO.

This should contain the following information, in columns:—

1	2	3
Tenants' Names.	Lands to which admitted, and the subject of Commutation.	Date of Admission.

No. 10.

AGREEMENT WITH TWO OR MORE TENANTS FOR THE COMMUTATION OF MANORIAL RIGHTS, WHERE THE RENT-CHARGE OR OTHER CONSIDERATION FOR THE COMMUTATION IS APPORTIONED BY THE AGREEMENT.—See s. 52.

Manor of
County of }

Memorandum of agreement made the day of 18 between A. B. of &c. lord of the said manor of the first part; C. D. of &c., a tenant of the said manor of the second part; E. F. of &c. another tenant of the said manor of the third part [*according to the number of the tenants*]. Witness, that in pursuance of the powers and authorities for that purpose given in and by an Act passed in the fourth and fifth years of the reign of her present Majesty Queen Victoria, intituled "An Act for the Commutation of certain Manorial Rights in respect of Lands of Copyhold and Customary tenure, and in respect of other lands subject to such rights, and for facilitating the Enfranchisement of such Lands, and for the Improvement of such Tenure," the said parties above-named, lord and tenants of the said manor to the number of [or being all the tenants of the said manor] [with the consent of the said commissioners under the said act, testified by their signatures and seal hereupon written and impressed] do hereby contract and agree for the commutation of the rents, fines, and heriots payable to the said lord in respect of the lands described in the first schedule hereunder written, (*here specify any other rights which may be the subject of the agree-*

ment), in consideration of a rent-charge as hereinafter is mentioned, [and subject to increase or decrease as hereinafter mentioned] to be paid in respect of all the said lands described in the first schedule hereunder written, but to be apportioned as hereinafter and therein mentioned, and of a fine certain of the sum of five shillings, to be paid in respect of each and every of the said lands respectively on the death or alienation of the said several tenants parties hereto. And it is hereby agreed that such rent-charge shall be the sum of pounds,* but shall be variable from time to time, according to the price of corn, as in the said act mentioned or provided; and that the same sum of pounds shall be apportioned in respect of the several lands at the several sums mentioned in the said first schedule, and that such apportioned sums in respect of each of such lands shall be deemed the commutation rent-charge, payable in respect thereof as fully to all intents and purposes as if each of such rent-charges or apportioned sums, had been fixed and agreed on between the said (lord) and the tenant standing admitted to the lands in respect of which the same are so respectively apportioned. And it is hereby agreed that such rent-charge and apportionment thereof respectively shall commence from the day of and be respectively payable [to the said A. B. and other the lord and lords, lady and ladies of the said manor for the time being], half-yearly, on the first day of July and the first day of January, for ever hereafter, and that the first payment shall be respectively made on the day of next ensuing the date hereof. And it is hereby agreed that the fees payable to the steward of the said manor from and after the confirmation of these presents, shall not exceed the scale in the said second schedule hereunder written. As witness the hands of the said parties the day and year first above written.

THE FIRST SCHEDULE ABOVE REFERRED TO.

This should contain the following information in columns :—

1	2	3	4
Tenant's Names.	Lands to which admitted, and the subject of Commutation.	Date of Admission	Sum apportioned in respect of each Tenement.

THE SECOND SCHEDULE ABOVE REFERRED TO.

Scale of Steward's Fees.]

[To be continued.]

* This will be a variable corn-rent. See s. 36.

CIRCUITS OF THE COMMISSIONERS FOR THE RELIEF OF INSOLVENT DEBTORS.

Autumn Circuits, 1841.

SOUTHERN CIRCUIT.

H. R. Reynolds, Esq., Chief Commissioner.

Berkshire, at Reading, Tuesday, Oct. 19.
Oxfordshire, at Oxford and City, Thursday, Oct. 21.
Worcestershire, at Worcester and City, Saturday, Oct. 23.
Herefordshire, at Hereford, Tuesday, Oct. 26.
Radnorshire, at Presteigne, Wednesday, Oct. 27.
Brecknockshire, at Brecon, Friday, Oct. 29.
Carmarthenshire, at Carmarthen and Borough, Monday, Nov. 1.
Cardiganshire, at Cardigan, Wednesday, Nov. 3.
Pembrokeshire, at Haverfordwest and Town, Friday, Nov. 5.
Glamorganshire, at Swansea, Monday, Nov. 8.
Glamorganshire, at Cardiff, Wednesday, Nov. 10.
Monmouthshire, at Monmouth, Friday, Nov. 12.
Gloucestershire, at Gloucester and City, Monday, Nov. 15.
At the City and County of the City of Bristol, Thursday, Nov. 18.
Somersetshire, at Bath, Monday, Nov. 22.
Somersetshire, at Wells, Wednesday, Nov. 24.
Devonshire, at Exeter and City, Friday, Nov. 26.
Devonshire, at Plymouth, Tuesday, Nov. 30.
Cornwall, at Bodmin, Thursday, Dec. 2.
Dorsetshire, at Dorchester, Monday, Dec. 6.
Wiltshire, at Salisbury, Wednesday, Dec. 8.
At the Town and County of the Town of Southampton, Thursday, Dec. 9.
Southampton, at Winchester, Friday, Dec. 10.

MIDLAND CIRCUIT.

J. G. Harris, Esq., Commissioner.

Essex, at Chelmsford, Tuesday, Nov. 2.
Essex, at Colchester, Wednesday, Nov. 3.
Suffolk, at Ipswich, Thursday, Nov. 4.
Norfolk, at Yarmouth, Saturday, Nov. 6.
Norfolk, at Norwich and city, Monday, Nov. 8.
Norfolk, at Lynn, Wednesday, Nov. 10.
Suffolk, at Bury St Edmund's, Friday, Nov. 12.
Cambridgeshire, at Cambridge, Monday, Nov. 13.
Huntingdonshire, at Huntingdon, Wednesday, Nov. 17.
Northamptonshire, at Peterborough, Thursday, Nov. 18.
Lincolnshire, at Lincoln and City, Friday, Nov. 19.
Nottinghamshire, at Nottingham and Town, Monday, Nov. 22.
Derbyshire, at Derby, Wednesday, Nov. 24.
Staffordshire, at Lichfield, Thursday, Nov. 25.
Staffordshire, at Stafford, Friday, Nov. 26.
Shropshire, at Shrewsbury, Tuesday, Nov. 30.
Shropshire, at Oldbury, Thursday, Dec. 2.
Warwickshire, at Birmingham, Friday, Dec. 3.
Warwickshire, at Warwick, Monday, Dec. 6.
At the City and County of the City of Coventry, Thursday, Dec. 9.
Leicestershire, at Leicester, Friday, Dec. 10.
Northamptonshire, at Northampton, Monday, Dec. 13.
Bedfordshire, at Bedford, Wednesday, Dec. 15.
Buckinghamshire, at Aylesbury, Friday, Dec. 17.

NORTHERN CIRCUIT.

T. B. Bowen, Esq., Commissioner.

Rutlandshire, at Oakham, Saturday, Oct. 16.
 Yorkshire, at Sheffield, Monday, Oct. 18.
 Yorkshire, at Wakefield, Wednesday, Oct. 20.
At the Town and County of the Town of Kingston-upon-Hull, Friday, Oct. 29.
 Yorkshire, at York Castle, Monday, Nov. 1.
 Yorkshire, at York City, Tuesday, Nov. 2.
 Yorkshire, at Richmond, Thursday, Nov. 4.
 Durham, at Durham, Friday, Nov. 5.
 Northumberland, at Newcastle-upon-Tyne and Town, Monday, Nov. 8.
 Cumberland, at Carlisle, Thursday, Nov. 11.
 Westmorland, at Appleby, Saturday, Nov. 13.
 Westmorland, at Kendal, Monday, Nov. 15.
 Lancashire, at Lancaster, Tuesday, Nov. 16.
 Lancashire, at Preston, Thursday, Nov. 23.
 Lancashire, at Liverpool, Friday, Nov. 25.
 Cheshire, at Chester and City, Monday, Nov. 29.
 Flintshire, at Mold, Wednesday, Dec. 1.
 Denbighshire, at Ruthin, Thursday, Dec. 2.
 Anglesey, at Beaumaris, Saturday, Dec. 4.
 Carnarvonshire, at Carnarvon, Monday, Dec. 6.
 Merionethshire, at Dolgelly, Wednesday, Dec. 8.
 Montgomeryshire, at Welchpool, Friday, Dec. 10.

HOME CIRCUIT.

W. J. Lew, Esq., Commissioner.

Kent, at Dover, Friday, Nov. 12.
 Kent, at Canterbury, Saturday, Nov. 13.
 Kent, at Maidstone, Monday, Nov. 15.
 Sussex, at Horsham, Friday, Nov. 26.
 Hertfordshire, at Hertford, Saturday, Dec. 4.

SUPERIOR COURTS.

Vice Chancellor's Court.

TRUSTEES OUT OF THE JURISDICTION.—CONSTRUCTION OF 1 W. 4, c. 60.

The Court will not exercise the power given by the act of 1 W. 4, c. 60, for the appointment of new trustees, without a reference to the master, if any proof is required to establish the rights of the cestui que trusts.

The petition in this matter was presented on behalf of one of the trustees named in the will of William George Tate, which was proved in October 1829; and it stated that the testator gave all his real and personal estate to the petitioner and John Dobbinson, his co-trustee, upon trust to receive the rents and produce thereof, and pay the same to his (the testator's) wife during her life, and after her decease, at the discretion of his said trustees, or trustee for the time being absolutely, to sell and dispose of his freehold and leasehold estates, and directed that his said trustees, or trustee, should stand possessed of the monies to arise from the said sale, in trust for such of his children Joseph William Tate, Sarah Ann Tate, Elizabeth Rebecca Tate, William George Tate, and John Thomas Frederick Tate, as being sons, had attained, or should live to attain the age of twenty-one years, or being daughters, should attain that age or be mar-

ried, in equal shares. The will also contained powers for advancement and maintenance, and for the appointment of new trustees in the place of any who should happen to die or be desirous of being discharged, or refuse, or decline, or become incapable to act. The testator's wife died on the 3d of March 1840, leaving all the children her surviving, who had all attained their ages of twenty-one years, and one of the daughters had married. Dobbinson, the petitioner's co-trustee, having settled in America, the petitioner shortly after Mrs. Tate's death sold a freehold estate which formerly belonged to the testator, and the sale being considered beneficial to the parties entitled under the testator's will, this petition was presented in order to complete the conveyance to the purchaser, and it prayed that a party named in the petition might be appointed a trustee in the stead of Dobbinson, and that the petitioner might be directed to convey the testator's estate to such new trustee conjointly with the petitioner, for the purpose of executing a conveyance to the purchaser.

K. Bruce, for the petitioner, urged that as all the *cestui que trusts* were named in the will and consented to the petition, the Court might at once appoint the proposed trustee without a reference to the master; and

S. Miller, for the *cestui que trusts*, cited *Ex parte Shick*, 5 Sim. 281, where an order was made without a reference on its being shewn to the Court that the petitioner was the only person interested in the trust property.

Heath, for the purchaser.

The Vice Chancellor said the reference could only be dispensed with in a very plain case, and he did not think this such a case. The order must therefore be made for the usual reference.

In the matter of Tate, July 2d, 1821.

[The grounds of this decision are not quite apparent. The only difference between this case and *Ex parte Shick*, where affidavits identifying the party entitled and proving the trustee to be out of the jurisdiction, were deemed sufficient, is, that in this case there are several parties who were respectively entitled on their attaining twenty-one; but where a fund is required to be paid out of Court, affidavits to identity and proving the registers of baptism, &c. are considered satisfactory without a reference; and there appears no good reason why similar evidence should not be received on applications for the appointment of new trustees. Ed.]

Queen's Bench.

[Before the four Judges.]

BARRISTER'S PRIVILEGE FROM ARREST.

A barrister, as such, is not privileged from arrest merely because he is attending in the ordinary manner at the sessions.

Quære? whether he would be privileged if previously retained to attend the sessions.

This was an action on the case brought by the plaintiff to recover damages under the following circumstances:—The plaintiff declared that he was accustomed to practise as a barrister at a court of quarter sessions held at Ripon; that after attending at such court of quarter sessions, where he had been actually retained in a case to be determined there (of all which premises the defendant had notice), he was, while returning from the court to his own house, arrested by the defendant, the high sheriff of the county, on a *ca. sa.* issuing out of this court. The defendant demurred to the declaration as not setting forth a sufficient cause of action. Joinder in demurrer.

Mr. Kelly, in support of the demurrer.—This is not a case of privilege; but if it is, then the privilege is that of a court which has a right to the free attendance of the persons entitled to practise before it, and which may punish the violator of its privileges; but it is not the privilege of an individual, and cannot be punishable by him. If the arrest has been unlawful on the ground of privilege, it is a contempt of the court, and nothing else. The plaintiff here is not a person privileged from arrest. A barrister, as such, does not enjoy any such privilege. He may be arrested under any circumstances which do not clothe him with the protection of a court. That shews that the privilege is not a personal one. A barrister actually practising in the superior courts at Westminster Hall or on the assizes, is protected from arrest while on his way thither, or actually returning thence to his own home. There are no precedents which can be quoted as directly in point here, and the case must therefore be decided by reasoning on analogy. Admitting the claim to exist to the extent now stated as to the superior courts at Westminster and the assizes, there is no pretence whatever for saying that it exists as to all courts whatever.

The question whether trespass or case was the proper form of action was discussed, but not decided.

Sir W. Follett, for the plaintiff.—This is a personal privilege granted for public reasons; but attached to the person of the barrister in whatever court he may be practising. The law deeming the full protection of the client an object of paramount importance, has created this privilege, that by no fraud or trick whatever may a client be deprived of the benefit of the talents of the particular advocate he has selected. The value of a man's interests is not decided by the circumstance that they are discussed in one court or in another. In every instance the law desires to secure him the

means of a full and satisfactory protection, and this object is defeated if, because the client is a defendant before the sessions instead of before the courts at Westminster, he may be robbed of the assistance of the barrister he has specially selected to advocate his cause.

Lord Denman, C. J.—This is an action on the case, for maliciously and without reasonable and probable cause, arresting the plaintiff; the defendant, at the time, having full notice that the plaintiff was privileged from arrest, because he was at that time returning from the quarter sessions, where he had been practising as a barrister, and had been engaged to practise, and had actually practised there in defending a man against an indictment for an assault. The defendant put in a general demurrer to this declaration, and on that, a very protracted argument took place in the course of last term, on the question, whether it was the proper form of action to be adopted in this case; the defendant contending that if the action was at all maintainable, trespass ought to have been brought. We need not, however, decide that question, for we are clearly of opinion that this supposed privilege does not exist in law. The attendance of parties and witnesses, in going to a Court, remaining there and returning from it, has long been protected by the privilege of freedom from liability to arrest. It is necessary for the purposes of justice that it should be so; but the protection of legal officers, of whom a barrister may be considered one, is of a different character, and may well be confined within narrower limits; and in the case of *Collier v. Hicks*,^a such exemptions are said to depend on presumption. No decision, however, has settled the extent of such exemption; nor does there appear to be any authorities on this point, except certain traditions of Westminster Hall, which were acceded to and referred to by the Judges in the case of *Meehins v. Smith*.^b The exemption, whatever it was, before the year 1833, was derived from the relative position and duties of the Bar in the Courts at Westminster Hall and those on the circuit, the latter Courts being attended by the same barristers who practised in the former. An extension of the privilege was, however, made in the year 1833, in the case of *Luntley v. Nathaniel*,^c in which the barrister who had been arrested in coming from the sessions at Newington, was discharged from custody. But in that case the existence of the privilege was taken as admitted, without any discussion, and the question was confined to the point whether the defendant was, at the time of the arrest, on his way home from the sessions, and the

^a 2 Barn. & Ad. 663.

^b 1 Hen. Bl. 636; the rule in which case was recognized and acted on in an anonymous case in B. R. 30th June, 1813, where a person coming to justify as bail was discharged from custody.

^c 2 Dowl. P. C. 51.

case was decided on the authority of *Meekins v. Smith*. But that case itself did not decide the point. The Judges there stated their recollection of cases where discharges had been ordered on this ground, but it was certainly in each of those cases, with the qualifications before adverted to. We are aware of the stat. 6 & 7 W. 4, c. 114, by which persons accused of crimes at the sessions are entitled to make their defence before the justices by counsel and attorney. But that statute does not enact that the counsel and attorneys attending at sessions should be protected from arrest while so attending, and we certainly cannot by implication alone say that the legislature intended to confer a privilege from liability to arrest upon all the barristers and all the attorneys who might at one time or another have to attend at sessions, such privilege would be in effect a privilege to all the barristers and attorneys in England. It is hardly possible to conceive that such a privilege should be intended to exist without express declaration being made of such intention; or, that if it exists, it can go beyond such legal persons as have been previously engaged to attend at the sessions, and can be intended to protect gentlemen who voluntarily resort to the sessions for the purpose of doing any business which may arise there. We are aware too, that in this case two of the judges before whom this case was brought while they were on circuit have thought the plaintiff entitled to be discharged; but on communicating with them, they do not entertain any very strong opinion on the subject, and one of them doubts whether they acted correctly. On examination of the authorities we think that they fail to establish the argument for the plaintiff. The exemption claimed here is too large, and there must therefore be judgment for the defendant.

Judgment for the defendant.—*Newton, Esq. v. Constable, Bart., T. T. 1841. Q. B. F. J.*

Queen's Bench Practice Court.

COGNOVIT.—ATTESTATION UNDER 1 & 2 VICT. c. 110, s. 9.—ATTORNEY'S CLERK.

If an attorney is employed by both plaintiff and defendant in a particular transaction, his clerk cannot duly attest a warrant of attorney given by the latter to the former, pursuant to 1 & 2 Vict. c. 110, s. 9, although the clerk is admitted an attorney,

¹ In this case *Gale* obtained a rule nisi for setting aside a warrant of attorney for a sum of 4900*l.*, on the ground that it had not been duly attested according to 1 & 2 Vict. c. 110, s. 9. The question raised was, whether the attestation by an attorney's clerk, that clerk being an attorney himself, to a warrant of attorney, was good, his master acting as attorney for both parties in the particular transaction in the course of which the warrant was given. *Byles* shewed cause. *Cur. adv. vult.*

Coleridge, J.—This was a rule for setting aside a warrant of attorney, with the judgment

and execution issued thereon, on the ground that the requisites of the 1 & 2 Vict. c. 110, s. 9, were not complied with in the attestation. The undisputed facts of the case are these:—that the defendants, resident in London, owed one Martin, an attorney in Westminster, in the spring of 1840, nearly 3000*l.* Their goods were about the same time seized under an execution at the suit of the Metropolitan Bank; in this state they were desirous to raise money, and Martin, who was their attorney, informed them that he had a client who would advance it. The plaintiff is a solicitor of Norwich, a stranger, as it should seem, to the defendants, and through the intervention of Martin, he agreed to advance 4900*l.* on leasehold security and a warrant of attorney; both these instruments were prepared by Martin, the drafts having been sent by him, as he swears, to the plaintiff to be settled; but no abstract of title to the leasehold premises was ever submitted to plaintiff: in this he entirely trusted to Martin. The instruments were prepared at the expense of defendants, and no charge made against the plaintiff by Mr. Martin. Martin signed the judgment for the plaintiff a day or two after the execution of the warrant; he was not the general London agent for the plaintiff, and the execution was issued out by the attorneys for him. In this transaction the defendants swear they believe Martin acted as the attorney of the plaintiff. Martin swears positively that he acted only as the attorney for the defendants; but on a transaction like this, whether a party acts as agent for the one or the other, is a conclusion from other premises rather than a single isolated fact. It becomes therefore a matter of opinion, and a Court will not feel in duty bound by the strongest assertion, however honestly it may believe it have been made. In my opinion, Martin is shewn by indisputable evidence to have acted as the attorney and agent, both of the plaintiff and defendants; he represents plaintiff as his client in the first instance, and the plaintiff entirely trusts to him in the most important parts of the whole transaction. I am therefore of opinion that he would not have attested the execution of the defendants. The whole intention of the statute would be defeated, if a person so connected with the plaintiff could act as the attorney for the defendants on that occasion. If any authority were necessary for this, the case of *Rising v. Dolphin*,^a appears to me to be abundantly sufficient.

I have been thus minute as to the situation in which Martin stood, because that seems to me, under the circumstances I am about to state, to decide the case. At the time this transaction was going on, an attorney of the name of Crowther was engaged with him and serving him as his clerk, and he it was who in fact attested the execution. I by no means say that he was not competent to do many acts as attorney because he was clerk; but being clerk and servant to an attorney Mr.

^a *Ante*, vol. 8, p. 309.

Martin, who was acting in the transaction as attorney for the plaintiff, I think he was affected by his master's disability. The fact that he was attorney himself, enabled him in this instance to represent and act for his master, and I think he did so. I observe that he states in effect that he often attended because Martin was prevented by other engagements from doing so, and he does not state that he charged the defendants any thing for so acting, or received any remuneration from any one on their behalf.

Looking at the substance, therefore, of the transaction, which to effectuate the purposes of the act must be done, but not meaning to impute any fraud in the particular instance before me, I think this warrant was not properly attested, and that the rule must be absolute.

No action to be brought against the plaintiff or the sheriff.

Rule absolute.—*Durrant v. Blurton*, T. T. 1841. Q. B. P. C.

ACCOUNT STATED.—WRIT OF INQUIRY.—EVIDENCE.—ADMISSION.—SET OFF.—PAYMENT.

If, where a writ of inquiry is executed, the plaintiff puts in evidence an account made out by the defendant, wherein he credits and debits the plaintiff, the credit side of the account is evidence against the defendant, but the debit side is not evidence for him.

In this case, which was an action for goods sold and delivered and on an account stated, the defendant suffered judgment by default. A writ of inquiry was accordingly executed. When before the secondary, the plaintiff put in an account stated by the defendant, in which he admitted that the plaintiff had claims on him to a certain amount; but on the other side of the account he sought to set off a counter claim on his part against the plaintiff. The secondary told the jury that they were to give a verdict for the amount which, upon the balance of the account stated, appeared to be due. The jury found a verdict in favor of plaintiff for 1s.

Erle obtained a rule *nisi* to set aside the execution of the writ, on the ground that the secondary had misdirected the jury, as the defendant not having pleaded either payment or set-off, he was not in a situation to avail himself of the debit side of the account.

Fortescue shewed cause against this rule, and contended that as the plaintiff had put the account in evidence he had made both sides of it proof. The defendant could not have done this, as that would have been making evidence for himself. It was, however, perfectly competent for the plaintiff to put the account in proof, and if he did, he must be bound by its contents. The direction of the secondary was therefore correct, and the finding of the jury right.

Coleridge, J., thought that the direction of the secondary was wrong, and therefore directed the rule to be made absolute.

Rule absolute.—*Groom v. Richardson*, T. T. 41. Q. B. P. C.

MISCELLANEA.

BURKE'S OPINIONS.

Irrationality of guilt.—Guilt is never rational: it disturbs all the faculties of the mind, and leaves a man no longer the free use of his reason. It puts him in that condition which (all used to our courts know) has been the cause of the detection of half the criminals here. 4 vol. 357.

Penal Laws.—The insufficiency of the law was frequently not so much owing to the law itself as to the remissness of those who were to put it in execution; and hence the legislature was often called on to punish by rigorous penalties, the negligence of the functionaries, on the inadoertencies of the poor. Vol. 3, p. 441.

Experience.—But experience could not be drawn from blossoming talents; it could only be looked for from matured manhood: the degree of skill necessary for the chair of that House, was to be expected from acquired experience, rather than brilliant talents. Vol. 3, p. 443

Youth supplies us with that ardour which renders us eloquent and quick, though on subjects connected with the natural feelings of man; but age is modelled in its mind by experience, and speaks only what the conventional interests of mankind point out as circumspect.

THE EDITOR'S LETTER BOX.

We do not consider it usual or expedient to enter into a controversy with our correspondents on the merits of new publications. We offer such notice of their nature and contents as we deem proper, and our readers will judge for themselves. Our limits will not admit of the disquisitions proposed.

"One other, &c." suggests that the act relating to *Leases for a Year* should be introduced in the beginning of the release, in the following manner:—This indenture, made the day of _____, A. D. 1841, in pursuance of an act passed, &c. between A. B. of, &c.

H. K., another correspondent, suggests the following form at the beginning of the deed, in a similar manner (*mutatis mutandis*) to that set forth in the instruments of assurance prescribed by the statute 5 & 6 W. 4, c. 69, for the conveyance of parish property in the schedule of that act: thus—This indenture, made the day of _____, A. D. 1841, in pursuance of an act passed in the fourth year of the reign of her Majesty Queen Victoria, intituled, "An Act for rendering a Release as effectual for the Conveyance of Freehold Estates as a Lease and Release by the same Parties," between, &c. The words of the statute being "expressed to be made," &c. not conveyed, this form appears, he says, the most direct and neat; and will be found in many respects preferable to introducing the same, either in the operative part of the deed, or by way of recital or proviso, as suggested by some of our correspondents. See ante, p. 226.

The Legal Observer.

SATURDAY, JULY 24, 1841.

— “Quod magis ad nos
Pertinet, et necire malum est, agitamus.

HORAT.

LETTERS ON THE COURT OF CHANCERY.

LETTER X.

To the Editor of the Legal Observer.

Sir,

I AM desirous of calling your attention, and that of your readers, to the following speech delivered by Lord Chancellor Campbell at the close of the sittings in the Court of Chancery in Dublin, on the 12th of this month, which was addressed to the Bar.—

“As there are no other causes, petitions, or motions to be disposed of, the sittings will now close; and I think it proper to mention to the bar, that I purpose forthwith to devote myself to the consideration of how far the procedure of the court may be farther simplified and improved.

“I have the satisfaction to find that where the Chancery practice is different in Ireland and in England, that established here is, in various instances, to be preferred—as discarding useless forms, and speeding the suit to a hearing. The mode of enforcing decrees in mortgage suits is likewise much more effectual.

“In the abolition of the Six Clerks’ Office, an example has been set which England will do well to imitate. This change, I have every reason to believe, has here proved a great relief to the suitors, and has materially facilitated the conduct of business among the solicitors.

“But there can be no doubt that, both in England and Ireland, the administration of justice in Courts of Equity may be still greatly improved by increased expedition and diminished expense.

“While for grievances redressed by the Courts of Common Law a speedy and comparatively cheap remedy is afforded, it must be

admitted that where demands are of a fiduciary nature, so that they can only be enforced in a Court of Equity, the delays are often most harassing, and the costs often are so great in proportion to the sum to be recovered, that the more prudent course is to submit to wrong, and to give triumph to fraud.

“One great cause of this evil is the prolixity of the written pleadings in a suit, which is generally begun by the plaintiff in his bill very tediously telling his tale three times over. I know it is the opinion of that consummate equity judge, Lord Cottenham, that a simple statement of the facts on which the plaintiff asks for equitable relief would be quite sufficient, and that the other parts of the bill are superfluous.

“But, I believe, that in various cases, where property is to be administered by the aid of the Court, bills and answers may be entirely dispensed with, and that upon a short petition there may be at once a reference to the Master. The time and expense thus saved in creditors’ suits, and others of the same description, it would be difficult to calculate, without seeming exaggeration.

“In these reforms I know that I shall have the warm and generous support of the bar. In the alterations I have been instrumental in introducing into the law of real property and the law of debtor and creditor in England, I was zealously seconded by all branches of the profession there; and here I may confidently look for equal intelligence and equal disinterestedness.

“My great reliance, however, must be on the advice and co-operation of that accomplished lawyer, Sir Michael O’Loghlen, the Master of the Rolls, equally distinguished for the soundness of his decisions on the bench, and the aptitude he has displayed for the improvement of our judicial institutions.

“I do not forget, that before I have com-

R

pleted this important undertaking I may be reduced to a private station, but this can be no sufficient reason why I should not zealously enter upon it. I shall be prepared at any time to leave the high office which I have now the honour to hold, with the consciousness that, while I held it I intended well.

"Laudo manentem, Si celeres quatit
Pennas, resigno quæ dedit—

—probamque
Pauperiem sine dote quæro."

Now, Sir, I have received very great pleasure from every portion of this speech. In the first place, it has hitherto been no very usual occurrence for a Judge to address himself to the Bar, admitting the general abuses of the Court over which he presides, and informing them of his intention to endeavour to amend them.

But what are the reforms which are proposed? It will be found that they are of no trifling character: and coming from such a quarter, I need hardly point out the importance which should be attached to them. Lord Campbell is not a man to make a needless speech for the sake of a little temporary effect, or without knowing the ground on which he stood. I have no knowledge, of course, of the fact, but I believe he made this statement, having previously had ample communication on the subject with Lord Cottenham. He may reasonably be supposed, therefore, to speak the sentiments of the Equity Judges of this country, as well as of those of Ireland. Indeed it will be seen that he expressly refers to the opinion of Lord Cottenham as to one important matter.

Having thus shewn you, Sir, the value of the statement, let us see what is proposed. First, we may reasonably conclude that the doom of the Six Clerk's Office is fixed in England, as it has already been sealed in Ireland. Indeed, this is by no means the only instance, as is suggested by Lord Campbell, in which we would advantageously take a leaf out of the Irish Chancery practice. I may mention another matter not alluded to by him, which, with some modifications, might here be very advantageously adopted. In Ireland, the Lord Chancellor's secretary is a person qualified to dispose of all easy matters, and in fact, as I am informed, makes orders on all petitions of course, and thus saves the parties the expense and delay of a hearing before the Judge, the Secretary taking care where there is any doubt, to bring the matter before the Judge.—But this is by the way.

Lord Campbell next fairly admits that according to the present practice, the suitor

had better, in many cases, abandon his claim, than go into an Equity Court to enforce it—a state of things frightful indeed, but too true. I am glad, therefore, to find it admitted at the fountain-head. Lord Campbell attributes this mainly to the prolixity of the present system of equity pleadings, and he is right. I have endeavoured, in a previous letter, to shew this by an examination of the present pleadings,^a and I will not go over the ground again. I am glad, however, to find this also admitted in so high a quarter.

But Lord Campbell points to a still more important change. The abbreviating and simplifying pleadings would be well, but to dispense with them altogether in certain cases would be infinitely better. This is what I ventured to propose,^b and although a bold proposition, it will be adopted I am satisfied, as it will indeed be attended with a saving of expense and delay, which, in the words of Lord Campbell, "it would be difficult to calculate without seeming exaggeration."

In thus early taking his stand as a reforming Judge, Lord Campbell has, in my opinion, done himself great credit, and I consider that the thanks of the English, as well as the Irish, profession are due to him.

The first blow at the abuses of the present practice of the Court of Chancery has been struck. Most of the changes which I ventured to throw out as proper to be made, will now, I am confident, be effected. You will remember, in my earlier letters, that I did not take to myself any of the merit of suggesting these alterations: I merely proposed them for discussion, as entertained by many eminent persons; and I now consider it clear that many of them will be adopted, and that all of them will be considered, and will in time, as I believe, be carried through. The most important of all, the changes in the Masters' Office, *must sooner or later be made*: but it will, of course, take time to prepare the public mind for them. In the meantime, Sir, let me exhort you to persevere in the course you have taken, of throwing open your columns to the discussion of important practical reforms, which, more than any other way that I know of, prepares the public mind for them; and if they are worth any thing, finally secures their success.

I am, Sir,

Your's with great regard,

PETER.

Lincoln's Inn, July 20th, 1841.

^a See Letter III., 21 L. O. p. 82.

^b See Letter III., 21 L. O. 81.

THE APPROACHING SESSION OF PARLIAMENT.

SOME doubt seems to exist as to the length of the sitting of parliament, which will commence, as it is understood, on the 19th of August; and its duration is of some importance with reference to the Chancery Bill. It is said by some that it is the intention of Sir Robert Peel, if he takes office—and the *if*, we presume, is hardly necessary—to pass the Chancery Bill forthwith, before next Michaelmas Term, not only that he wishes to have the credit of the measure, but as it will facilitate some of the legal arrangements which he is desirous of making. Others say, and to this opinion we incline, that the Chancery Bill will certainly not be introduced until November or December, when parliament will re-assemble; and that it will be accompanied with various other measures of Chancery Reform.

LAWYERS IN THE NEW PARLIAMENT.

To our list at p. 209, of the members of the profession who have been returned to the new parliament, we have to add the following:—

Bodkin, Wm. Henry..	Rochester.
Hardy, John	Bradford.
Scott, R. Wellbeloved	Walsall.

The following are members of the bar, though not in actual practice:—

Becket, Right Honble.	} Leeds.
Sir J. Bart.	
D'Eyncourt, Rt. Hon.	} Lambeth.
C. Tennyson	
Estcourt, T. G. B....	Oxford University.
Inglis, Sir R. H., Bart.	Oxford University.
Lefevre, Right Hon.	} Hampshire (North).
C. S.	
Loch, J.	Wickburgh.
Strickland, Sir G., Bt.	Preston.
Teunent, J. Emerson.	Belfast.
Wilnot, Sir J.E., Bart.	Warwickshire (North)
Wood, C.	Halifax.

THE PROPERTY LAWYER.

STAMP ON AGREEMENT.

By the Stamp Act, 55 Geo. 3, c. 184, schedule, part 1, Agreements, the matter of which is of the value of 20*l.* are subject to a 1*l.* stamp duty, when the same shall not

contain more than 1080 words, being the amount of fifteen common law folios, or sheets of seventy-two words; but in computing the number of words, the words of every schedule, receipt, or other matter put or indorsed thereon, or annexed thereto, are to be counted. On this part of the statute it has been held that an agreement, which provided that the provisions of another agreement should extend to it, as if the same were repeated therein, was held to be sufficiently stamped with a 1*l.* stamp, the instrument itself containing less than 1080 words, though if the provisions referred to were to be counted, the words would have exceeded that number. This principle has been carried rather further in a late case. An agreement for the sale of a public house stated that the sale was subject to the covenants set forth in a draft of a lease delivered this day. The agreement itself contained less than 1080 words; but it was held that the covenants referred to were not to be taken into account in calculating the amount of stamp duty, and that therefore a 1*l.* stamp was sufficient. "I still entertain the opinion," said Lord Abinger, C. B., which I expressed at the trial, viz. that the act applies only to instruments executed by the parties, and to schedules and receipts or other matters indorsed thereon, or annexed thereto; consequently, in this case, the covenants of the lease referred to cannot be taken into account in computing the words of the agreement. According to the argument, it would follow that if an agreement referred to any number of deeds, an increase of stamp would be requisite, because the agreement could not be fully understood without looking at the deeds. We are asked to stretch the Stamp Act to an extent which no principle of construction warrants us in doing." *Sneeze v. Marshall*, 9 Dowl. 267. This appears to us to be a correct decision; but it seems obvious that under it an agreement for a lease might be materially shortened, if the parties desired it, by referring to the contents of any existing lease.

THE COPYHOLD ENFRANCHISEMENT ACT.

It will be some time before the Copyhold Enfranchisement Act, 4 & 5 Vict. c. 35, becomes generally known to the country at large. In the meantime, there is certainly no deficiency of guides to its provisions,

We have placed below^a some of the works which have been published since its having passed into a law, and we are by no means sure that we have enumerated all of them. Some of these have been published by their respective editors, as connected with works previously laid before the public, and this is certainly proper enough; they come in the form of bills of revivor and supplement; they keep alive in the remembrance of the public, the original information communicated: there is therefore much propriety in this course. The other works in our list which are not connected with previous publications, consist chiefly of reprints of the act, and notes explanatory of the clauses. We have, however, no hesitation in saying that of all the works that have as yet been published, Mr. Rouse's is the most useful. He has entered completely into the spirit of the act, and has evidently watched it with great attention during its progress, and is thoroughly acquainted with all its provisions. He is thus enabled to bring out a manual of commutation and enfranchisement practice under the act, which should be in the hands of every one intending to carry the act into operation.

Mr. Rouse's merits as an author are well known to many of our readers by his former work on Copyhold and Court-keeping Practice, in which he treated of and explained the law and practice relating to admissions; purchases and sales; mortgages; annuities; leases; deeds for the benefit of creditors; bankruptcy and insolvency; wills; partitions and enfranchisement; court-keeping; adjustment of fines, fees, &c. All the experience and knowledge shewn by his former work have been brought to bear by Mr. Rouse in the practice and forms for carrying out the provisions of the new act.

From the complicated nature of the in-

terests to be affected by proceedings under the new act, and the diversity of provisions for commutation and enfranchisement, the act by itself, or even if accompanied by explanatory notes, would be of but little service to the profession, or even to the public. Such an edition of the act might give information as to *what could be done*; but not *how*, or as to the *terms* which should be agreed to; neither could it point out the most advisable *time* for proceeding under the act, nor the *best course* to be taken in each case.

A more limited edition of the Tithe Commutation Act was found useful, from the comparative simplicity of its provisions; but even in tithe commutations, subsequent editions, giving more practical information than could be given by mere explanatory notes, were called for, and the public thus subjected to the expense of two editions instead of one. With a view to render needless such a supplemental edition in the case of copyhold commutation, the present edition has been published, giving the information mentioned in the title-page, and under the belief that, from the general interest of the subject, an extensive demand will be made for the edition.

This subject calls for information of three kinds—*legal, mathematical, and practical*—in order to be clearly understood and acted on, and the edition now offered gives such information.

The notes to the act are very numerous and full, and shew much knowledge of the complicated details relating to copyhold property. The suggestions of Mr. Rouse will be found peculiarly useful to all parties engaged or interested in the various provisions of the act,—to tenants as well as lords,—and to stewards as well as solicitors.

The following is extracted from the Author's preface:—

"With a view to instruct parties as to the terms on which they should negotiate for commutations or enfranchisements, I have prepared upwards of a dozen Rules, which, with several Tables, will be found in Part VII.; and with the Rules and Tables in my '*Remarks on Copyhold Enfranchisement*,' will, I trust, furnish the requisite information for calculating all the values under the act.

"I have not inserted in this work the Rules and Tables given with my '*Remarks*,' as the great length of the Tables would have caused an increase in the price of this work, almost, if not quite, equal with the price at which the other work is sold.

"Since the publication of the Act and Notes, I have examined the Act carefully with the authorized edition of the Act, and have

^a 1. The Copyhold Act, 4 & 5 Vic. c. 35, with Analysis and Notes. By Rolla Rouse, Esq., Barrister, price 2s.; and with the Commutation and Enfranchisement Practice, and nearly 100 Forms under the act, and the Forms issued by the Commissioners. Price 7s.

2. The Copyhold Act, with Analysis, Notes, &c. and the Forms issued by the Commissioners. By R. W. E. Forster, Esq., Barrister. Price 6s.

3. Treatise on Copyholds, with the Copyhold Act and Notes, &c. By Alfred Caswall, Esq., Barrister. 3d edition. Price 5s.

4. The Copyhold Act, with Notes, &c. and the Forms issued by the Commissioners. By John Meadows White, Esq. Price 3s.

5. The Copyhold Act, with Notes, &c. By Henry Stalman, Esq., Barrister.

given the result of such examination before the Table of Contents.

"I have devoted much time to the subject of Copyhold Enfranchisement and Commutation, both in its legal and mathematical points of consideration; and I trust that this edition of the Act will, with my *"Remarks on Enfranchisement,"* enable the profession and the public to clearly understand the subject, and to avail themselves of the advantages to be derived from adopting the provisions of the Act.

"I am convinced that there are in the Act provisions which may be adopted with advantage, not merely to one class of persons interested, but to all."

It appears to us that the author is peculiarly entitled to the favor of the profession and the public on account of the advantage which his work affords by the two-fold consideration of the subject in its *legal* and *mathematical* bearings. Indeed, the full information which the book contains in the mathematical department is invaluable. Mr. Rouse has also given in a condensed form, the practice in each proceeding under the act, with many practical suggestions to every class of persons affected by the enactments. He has also pointed out the several alterations now effected in copyhold and court-keeping practice.

The work contains a full collection of forms, in addition to those issued by the commissioners, which are applicable to ordinary cases, and do not extend to commutation and enfranchisement with single tenants, or to court-keeping entries. Indeed the great number of forms contained in the work must render it of great value to the practitioner, and to all who require to act under the statute.

CHANGES IN THE LAW,

IN THE LAST SESSION OF PARLIAMENT.

No. XIII.

LAW OF SEWERS.

4 & 5 Vict. c. 45.

An Act to amend an Act passed in the third and fourth years of the reign of his late Majesty king William the fourth, intituled "An Act to amend the Laws relating to Sewers."

[21st June, 1841.]

23 Hen. 8, c. 5. 3 & 4 Ed. 6, c. 8. 13 Eliz. c. 9. 3 & 4 W. 4, c. 22. *Courts of Sewers empowered to raise money by tax.*—

Whereas an act was passed in the twenty-third year of the reign of his Majesty king Henry the Eighth, concerning commissions of sewers to be directed into all parts within the then realm of England, including the principality of Wales, in the manner and according to the form, tenor, and effect in the said act set forth, and which said act was made perpetual

by an act passed in the third and fourth years of the reign of his Majesty king Edward the Sixth, intituled, "An Act for the continuance of the Statute of Sewers," and was amended and altered by an act passed in the thirteenth year of the reign of her Majesty queen Elizabeth, intituled "An Act for the commission of Sewers," and was also amended by an act passed in the third and fourth years of his late Majesty king William the fourth, intituled, "An Act to amend the Laws relating to Sewers." And whereas by the last-recited act, certain payments and recompences to clerks and other persons employed by the court, and also to witnesses, and also certain costs, charges, and expences, to be incurred in surveying, measuring, planning, and valuing any lands and hereditaments, or otherwise preparatory to or in or about the making, collecting, and expending certain taxes, rates, and scots to be raised under or by virtue of the said recited acts, or any or either of them, or the hearing of objections to such taxes, rates, or scots, or in or about the carrying on of any litigation or controversy arising out of the duties imposed on the courts of sewers by virtue of the said recited acts, and for the payment of all other necessary allowances, charges, and expences of putting the said several recited acts into execution, and the contingent expences of working the commission of sewers, are authorised and directed to be paid and allowed out of the said taxes, rates, and scots, but the powers in some cases are not found sufficient to make, assess, or levy any taxes, rates, or scots which could or might be applied to the several purposes aforesaid, or any of them; and it is expedient that sufficient power should be given to the courts of sewers, for that purpose: May it therefore please your Majesty that it may be enacted; and be it enacted, by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present Parliament assembled, and by the authority of the same, that it shall be lawful for any court of sewers, for all or any of the purposes aforesaid, but for no other purpose whatsoever, from time to time, as often as occasion shall require, to tax in the gross, in each parish, township, or place, such lands and hereditaments which heretofore have been or hereafter shall be within or partly within the jurisdiction of such court, but so that such lands and hereditaments shall contribute thereto in proportion to the benefit and advantage received or capable to be received, from the said court, as compared with the lands and hereditaments of the other parishes, townships, or places within such jurisdiction, which said tax shall be denominated the General Sewers Tax, and shall be recovered and recoverable by distress and sale, in like manner and by all such ways and means as any fine or amercement imposed on a parish or township by a court of sewers is now by law recoverable; but no distress for such General Sewers Tax shall be replevied by any sheriff, undersheriff, judge, or court of law or equity whatsoever.

2. *Courts of Sewers may order the apportionment and collection of the tax.*—And be it enacted, that it shall and may be lawful for any court of sewers to direct and authorize any surveyor or other person to apportion such general tax among the occupiers of the lands and hereditaments in each such parish, township, or place which heretofore have been or hereafter shall be within or partly within the jurisdiction of such court of sewers, in such proportions and upon such individuals as of right ought to pay the same; and such tax, when so apportioned, shall be collected by such person as shall be appointed by the court for that purpose, and shall be by such person paid over to the treasurer or of other officer appointed by the commissioners of sewers, at such time as the court of sewers shall direct; provided that every occupier upon whom such general sewers rate shall be apportioned shall have notice in writing of such apportionment, ten days at the least before the next court of sewers to be held within the limits in which the lands and hereditaments to be taxed shall be.

3. *General sewers tax and apportionment to be final, if not complained against at the next court.*—And be it enacted, that in case no complaint shall be made against such general or apportioned sewers tax at the Court of Sewers held next after the expiration of ten days after such notice of apportionment shall be made as aforesaid, such general sewers rate, and such apportionment thereof, shall respectively be final and conclusive on all parties whomsoever; but in case of any complaint of inequality or non-liability to pay the general sewers rate, or such apportionment thereof respectively, the commissioners shall at such court, or at some adjournment thereof, or at some subsequent court, proceed to investigate the same, by the examination of such witnesses as the parties interested therein shall produce, or by the examination of such other witnesses as to the said court shall seem right; and the decision of such court as regards such general sewers rate and such apportionment thereof respectively shall be final; and such apportioned rate shall be recoverable by distress and sale of the effects of the persons respectively rated, by warrant under the hands and seals of six of the commissioners of sewers, but no distress for such apportioned rate shall be relieved by any sheriff, undersheriff, judge, or court of law or equity whatever; nevertheless the court of sewers shall be empowered to direct any feigned issue, appeal, or action at law, to try any dispute which may arise as to the inequality, or non-liability of any person to pay the said general sewers tax, or the said apportionment thereof, the person so objecting to the payment thereof having first given security to the said court for the payment of all costs and charges attendant thereon.

4. *Power to borrow and take up money at interest for general purposes. Provision for repayment.*—And whereas certain payments, allowances, and expences authorized by the said recited act of his said late Majesty king William the Fourth, may have been and may be

made and incurred before any general sewers rate can be recovered; be it therefore enacted, that it shall and may be lawful for courts of sewers from time to time to borrow and take up at interest any sum or sums of money for the several purposes aforesaid, or any of them; and the repayment of such sum and sums of money, with interest, shall from time to time be secured to the parties or party lending the same, their, his, or her, executors, administrators and assigns, upon or by virtue of a decree or ordinance, under the hands and seals of the commissioners of sewers, or any six of them, (which decree and ordinance the said court is hereby required to make,) charging the general sewers rates, or any of them, to be raised under and by virtue of this act, with the payment of such sum and sums of money, with interest: Provided always, that it shall be provided, expressed, and declared in and by the said decree and ordinance, that the sum or sums of money so borrowed and taken up as aforesaid shall be repaid within a time to be named in such decree or ordinance not being a longer period than seven years from the making thereof, by equal annual or shorter instalments, together with the interest on the sum or sums so borrowed or taken up, or on such part thereof as shall from time to time remain due and unpaid; and the said last-mentioned decree or ordinance shall be and remain in full force and effect until such sum and sums of money, and all interest thereon, shall have been fully paid and satisfied; any thing in the said recited acts or this act contained, or any custom or usage to the contrary notwithstanding.

5. *Courts of sewers may grant securities to persons advancing money.*—And for facilitating the raising, securing, and paying off from time to time of the monies which it may be necessary so to raise and borrow as aforesaid, be it enacted, that it shall and may be lawful for any court of sewers from time to time to grant securities, in the form of a certificate, under the hands and seals of six of the commissioners, to each person who shall so advance any sum of money as aforesaid, setting forth the amount of the sum borrowed, the rate of interest payable for the same, the periods at which the said principal money shall be decreed to be paid off by instalments, and the particular general sewers rate which is to be charged with the repayment thereof; and that every such security or certificate shall be made in the following words, or by any other words to the same purport and effect:

Form of security.—"By virtue of an act passed in the _____ year of the reign of her Majesty Queen Victoria, intituled [*here insert the title of this act*], we, the undersigned, being six of the commissioners [*here insert the general description of the commission under which they act*], in consideration of the sum of _____ of lawful money of Great Britain to [*here insert the name of the treasurer*] lent and paid by _____ do hereby certify, that the several general sewers rates to be made and levied within [*here insert the name of the district or level*] under and by vir-

tue of the said act are become charged with the repayment of the said sum, in instalments of one part on the

day of in every year, together with interest on such part of the said principal money as shall remain unpaid from time to time, at and after the rate of pounds *per centum per annum*, until the whole thereof shall be repaid; which sum so lent and advanced by the said is part of a capital sum of which at a court of sewers holden at on the day of last, was decreed and ordered to be taken up and borrowed. In witness whereof we have hereunto set our hands and seals the day of

6. *Securities may be transferred. Form of transfer. Transfers to be produced to the clerk to commissioners, and to be registered by him.*—And be it enacted, that every person, body politic, corporate, collegiate, aggregate or sole, who shall be entitled to the money thereby secured, and his, her, or their executors, administrators, and successors, may from time to time, personally, or by attorney thereunto lawfully authorized, assign or transfer his, her, or their right, title, interest, or benefit to the said principal and interest money thereby secured to any person whatsoever, by endorsing on the back of such security, in the presence of one credible witness who shall subscribe his name thereto, the following words, or words to the like effect:

'I [or we] A. B. of, &c. in consideration of the sum of to me this day paid by C. D., of, &c. do hereby transfer the within certificate of charge, with all my right and title to the principal money thereby secured, and now remaining due thereon, and to all the interest money now due or hereafter to become due, unto [his, her, or their] executors, administrators, successors, and assigns [as the case may be]. Given under my hand and seal this day of

Witness,

Which transfer shall be produced and notified to the clerk for the time being of the said commissioners, before the party holding the same transfer shall be entitled to receive any principal or interest due or owing as aforesaid; and every such clerk shall make an entry amongst the records of the said commissioners of the particulars of every such transfer, and endorse a minute of such entry upon the back of every such transfer, signed by such clerk, and for which entry and minute he shall be entitled to a fee of five shillings, and no more.

7. *Courts of Sewers may recompense jurymen.*—And be it enacted, that it shall be lawful for any Court of Sewers, by and out of the rates and scots raised and to be raised under or by virtue of any commission of sewers, to decree, order, appoint, allow, and pay to any jurymen summoned to attend and attending any Court of Sewers, such allowance and recompence for his expenses and loss of time as to such Court shall seem just.

8. *Courts of Sewers may amend or quash rate*

on appeal.—And be it enacted, that on all appeals from any rate made under the authority of any commission of sewers, it shall be lawful for the Court before which such appeal shall be made to amend such rate, either by inserting therein or striking out therefrom the name of any person, or by altering the sum therein charged on any person, or in any other manner which the said Court shall think just, without quashing such rate: Provided nevertheless, that if the Court shall be of opinion that the rate should be quashed, then the said Court may quash the same.

9. *Rated persons not incompetent witnesses.*—And be it enacted, that no person rated or liable to be rated to any tax, rate, or scot under or by virtue of any commission of sewers, or any commissioner of sewers, shall be deemed an incompetent witness before any Court of Sewers.

10. *How chairman shall be chosen.*—And be it enacted, that if any difference shall arise upon the choice of a chairman at any court or meeting of commissioners of sewers, such chairman shall be chosen by the majority of commissioners present thereat; and in case there shall be an equal number of votes upon such choice, then such one of the persons proposed whose name shall stand first in the commission under which such court or meeting is holden shall be the chairman thereof; and the chairman of every such court or meeting, in all cases of an equal number of votes upon any question or matter (including his own vote), shall have a casting or decisive vote.

11. *Commissioners of Sewers to hold meetings.*—And be it enacted, that it shall be lawful for the commissioners acting under any commission of sewers to hold courts and meetings of commissioners of sewers at any place not being a greater distance than ten miles from any part of the limits or district within their jurisdiction under such commission.

12. *Regulating meetings of Commissioners of Sewers.*—And be it enacted and declared, that in all cases when it hath happened or may hereafter happen that a sufficient number of commissioners of sewers to constitute a court or meeting shall not have met or shall not meet on the day appointed for holding any such court or meeting, and in all cases where any such court or meeting shall not have been or shall not be duly adjourned by the majority of commissioners present thereat, it shall be lawful for any one or more of the commissioners named in such commission, by some writing under his or their hands, to appoint a court or meeting of such commissioners to be holden at such time and place as he or they may think fit, of which court or meeting ten clear days' notice shall be given by advertisement inserted in some newspaper circulated in the county into which such commission shall run, and when the same shall run into more than one county, then in some newspaper circulated in each of such counties, and that the majority of commissioners present at any court or meeting (notwithstanding the whole number present be less than six) may adjourn and ar-

hereby authorized and empowered to adjourn the same respectively to any future day and to such place as to them may seem fit, and that the commissioners present at any court or meeting so appointed as aforesaid, or at any such adjourned court or meeting as aforesaid (the whole number present not being less than six), or the majority of them, shall and may exercise and perform all the powers, authorities, and duties vested in such commissioners under or by virtue of any commission of sewers.

13. *Saving powers of Courts of Sewers under recited acts*—And be it enacted, that nothing in this act contained shall prevent any court of sewers from executing all or any of the powers and provisions usually heretofore exercised under or by virtue of the said recited acts, or any or either of them, or the law of sewers of old time accustomed.

14. *Indemnities, &c. of 3 & 4 W. 4, c. 22, extended to this act*.—And be it enacted, that all indemnities, immunities, and liabilities given to or imposed upon commissioners of sewers and other persons in and by the said recited act, passed in the third and fourth years of his said late Majesty King William the Fourth, shall be deemed and construed to extend to all persons acting in the execution of this act.

15. *This act not to prejudice any local act*.—And be it enacted, that nothing in this act contained shall extend or be construed to extend to affect, alter, abridge, or interfere with any local or private act of parliament for sewers, concerning any county, city, town, district, lands, or limits, or any commission of sewers in the county of Middlesex, within the distance of ten miles from the Royal Exchange in the city of London, except such parts of the said county as may lie within any commission of sewers for the county of Essex; or to affect, alter, abridge, or interfere with any navigable river, canal, port, or harbour under the management or power of any commissioners, trustees, or proprietors by virtue of any local or private act of parliament; or to affect, alter, abridge, or interfere with any charter, law, usage, or custom in or concerning Romney Marsh in Kent, or the Great Level of the Fens called Bedford Level, or any lands, banks, waters, watercourses, sluices, bridges, drains, or works belonging to or under the jurisdiction, power, or control of the commissioners of the North Level and Portsand, in the counties of Cambridge, Northampton, and Lincoln, or of the commissioners of the Nene Outfall, in the counties of Cambridge, Lincoln, and Norfolk, or of their committees respectively.

16. *Saving the rights of the City of London*.—And be it enacted that nothing in this act contained shall extend or be construed to extend to repeal or in anywise affect, alter, abridge, or interfere with the commissioners of sewers of the city of London and liberties thereof, or the rights, powers, or privileges of the mayor, and commonalty and citizens of the city of London, in relation to the sewers, drains, vaults, and bridges within the said city or liberties, or any act or acts heretofore passed for making, amending, defending,

widening, altering, or cleansing the said sewers, drains, vaults, and bridges within the said city and liberties.

17. *Guarding the powers of the commissioners of Sewers for Westminster, &c.*—Provided always, and be it enacted, that nothing in this act contained shall prejudice, diminish, alter, limit, interfere with, take away, control, or suspend, or be held or construed to prejudice, diminish, alter, limit, interfere with, take away, control, or suspend, any of the rights, privileges, jurisdictions, powers, and authorities vested in or belonging to the commissioners of sewers for the city and liberty of Westminster and part of the county of Middlesex; but that all such rights, privileges, jurisdictions, powers, and authorities shall be as good, valid and effectual as if this act had not been passed.

18. *Saving rights of Bedford Level Corporation*.—Provided always, and be it enacted, that nothing in this act contained shall extend or be construed to extend to abridge, invalidate, lessen, or diminish, alter or take away, any of the rights, powers, privileges, and authorities vested in the governor, bailiffs, and commonalty of the company of conservators of the great level of the fens, called Bedford Level, or in the governor, bailiffs, and conservators of the Bedford Level Corporation, by virtue of an act passed in the fifteenth year of the reign of King Charles the Second, intitled “An Act for settling the drainage of the great Level of the Fens called Bedford Level,” or by any other act, statute, or charter, law of sewers, or otherwise howsoever; but that all rights, powers, and authorities which are now vested in the said governor, bailiffs, and commonalty, or in the said governor, bailiffs, and conservators, and in every or any of them, shall for ever hereafter remain, continue, and be in the said governor, bailiffs, and commonalty, and in the said governor, bailiffs, and conservators, and every of them, as fully and amply to all intents and purposes as if this act had not been passed.

The following, with our former lists, are the titles of the remaining public acts passed to the end of the last session, and which received the Royal Assent on the 21st June.

54. An Act to continue until the first day of January, one thousand eight hundred and forty-four, an act of the last session of parliament, for continuing an act for amending and extending the provisions of an act of the first year of her present majesty, for exempting certain Bills of Exchange and Promissory Notes from the operation of the laws relating to usury.

55. An Act further to continue until the first day of April, one thousand eight hundred and forty-two, an act of the third and fourth year of the reign of her present majesty, intitled, “An Act to amend the Laws relating to Loan Societies.”

56. An Act for taking away the Punishment of Death in certain cases, and substituting other punishments in lieu thereof.

57. An act for the prevention of Bribery at Elections.

58. An Act to amend the law for the Trial of controverted Elections.

59. An Act to authorize for one year, and until the end of the then next session of parliament the application of a portion of the Highway Rates to Turupike Roads, in certain cases.

60. An Act to alter and amend certain acts regulating Madhouses in Scotland, and to provide for the custody of dangerous lunatics.

61. An Act to defray the charge of the pay, clothing, and contingent and other expences of the disembodied militia in Great Britain and Ireland; and to grant allowances in certain cases to subaltern officers, adjutants, paymasters, quartermasters, surgeons, assistant surgeons, surgeons' mates, and serjeant majors of the militia, until the first day of July, one thousand eight hundred and forty-two.

[A list of the Local, Personal and Private Acts, will be given in an early number.]

POINTS IN COMMON LAW PRACTICE, BY QUESTION AND ANSWER. No. VIII.

ARBITRATIONS.

140. How may an action be referred to arbitration in the several stages of such action?
141. How can a matter in dispute be referred when no action is pending?
142. Must the submission to arbitration be made in writing?
143. Can a matter not included in an action be referred with the matters in issue therein?
144. How can a bond or agreement of reference be brought within the jurisdiction of the Court where there is no action pending?
145. Can a parol submission to reference be made a rule of Court?
146. By what means can a submission to reference be revoked?
147. In case an executor or assignee proceed in the reference after the death or bankruptcy of the party referring, will the submission to reference be binding on such executor or assignee?
148. Can a submission to reference be revoked by either party under any circumstances?
149. Can the time for making an award be enlarged by any and what means?
150. In case the arbitrator should permit the time for making his award to elapse, without enlarging the same, can it be enlarged by any and what authority?
151. What are the usual provisions in an order of reference with respect to the payment of costs?
152. Can an order of reference be made a rule of Court when the submission to reference has only provided that the award may be made a rule of Court?
153. What difference in practice is there be-

tween making a submission to reference a rule of Court in term and in vacation?

154. What course can be taken where a verdict has been given subject to an award and the arbitrator declines acting?

155. Before whom are witnesses sworn to give evidence before an arbitrator?

COPYHOLD ENFRANCHISEMENT.

FORMS OF PROCEDURE UNDER STATUTE
4 & 5 Vict. c. 35.

[Concluded from page 236]

No. 11.—AGREEMENT WITH TWELVE OR MORE TENANTS FOR THE ENFRANCHISEMENT OF CERTAIN LANDS WHERE THE RENT-CHARGE IS NOT APPORTIONED BY THE AGREEMENT, BUT IS LEFT TO BE APPORTIONED BY THE STEWARD. See s. 56.

Manor of _____ }
County of _____ }
Memorandum of agreement made the
day of _____ 18____, between *A. B.* of &c.
lord of the said manor of the first part; *C. D.*
of &c. a tenant of the said manor of the second
part; *E. F.* of &c. another tenant of the said
manor of the third part, &c. [according to the
number of the said tenants.] Witness, that in
pursuance of the powers and authorities for
that purpose given in and by an act passed in
the fourth and fifth years of the reign of her
present majesty Queen Victoria, intituled "An
Act for the Commutation of certain Manorial
Rights in respect of Lands of Copyhold and
Customary Tenure, and in respect of other
Lands subject to such Rights, and for facilitat-
ing the Enfranchisement of such Lands, and
for the Improvement of such Tenure," the said
parties above named lord and tenants of the
said manor to the number of [or being all the
tenants of the said manor] do hereby contract
and agree for the enfranchisement of the lands
described in the schedule hereunder written
[or as the case may be] in consideration of the
said sums respectively stated opposite the said
lands in the said schedule to be paid in respect
of the said lands described in the schedule
hereunder written, to the said *A. B.*, his ex-
ecutors, administrators, and assigns. As wit-
ness the hands of the said parties, the day and
year first above written.

THE SCHEDULE ABOVE REFERRED TO.

This should contain the following information
in columns:—

1	2	3	4
Tenant's Names.	Lands to which admitted, and the subject of Enfranchisement.	Date of Admission	Sums to be paid for Enfranchisement.

12.

By sect. 56 an enfranchisement by twelve or more tenants may be effected without a formal agreement, by a schedule of apportionment, such as is hereunder given.

Manor of

in the County of

A schedule of apportionment of the payments to be made in pursuance of an agreement come to for the enfranchisement of certain lands held of the above manor, pursuant to an act passed in the fourth and fifth years of the reign of her present Majesty Queen Victoria, intituled "An Act for the commutation of certain manorial rights in respect of lands of copyhold and customary tenure, and in respect of other lands subject to such rights, and for facilitating the enfranchisement of such lands, and for the improvement of such tenure." (See sec. 56.)

No.	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	
		Names of Tenants	Residences.	Descriptions.	Description of tenements.	Parishes in which situate.	Payments to the lord for enfranchisement from					Payments to steward		Costs			Total payments.	Date of payment to lord.	Signature or initials of lord.	Date of payment to steward.	Signature or initials of steward.	No. of years or period for which payment of money to be paid half-yearly, &c.	Other matters.		
							Quit rents, free rents, &c.	Fines and reliefs.	Hertots.	Rights in timber.	Other manorial rights in agreement.	Total.	Compensation.	Costs.	Valuers.	Apportionments.								Other costs.	
							£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.							

We, whose hands and seals are hereunto subscribed and attached, being the commissioners acting in the execution of the powers given under the above act, do order the several sums above specified to be paid by the respective persons against whose names the same are inserted in the above schedule of apportionment. And we do direct that the several sums therein mentioned as payments to the lord shall be paid to

of &c., his executors or administrators, or to such person as he of, &c., or to such other person as the valuers or the survivor, his executors or administrators shall from time to time under their or his hands appoint. And we direct that the sums therein mentioned as costs of apportionment shall be paid to of, &c., or to such other person as we shall from time to time under our hands appoint. And we do hereby confirm the above schedule of apportionment.

Given under our hands and seals the day of

A. D. 18

A. C. }
H. C. }
C. C. } L. S.

No. 13.

AGREEMENT WITH TWELVE OR MORE TENANTS
FOR THE ENFRANCHISEMENT OF CERTAIN
LANDS WHERE THE RENT-CHARGE IS IN-
TENDED TO BE APPORTIONED BY THE
PARTIES.

[Parties who find it convenient to execute an
agreement as a foundation for such a sche-
dule of apportionment as is given in No. 12,
may if they please use the following form.]

Manor of }
County of }

Memorandum of agreement made the
day of , between *A. B.*, of &c. lord of
the said manor of the first part; *C. D.*, of
&c. a tenant of the said manor, of the second
part; *E. F.*, of &c. another tenant of the said
manor, of the third part, &c. [according to the
number of the said tenants.] Witness, that in
pursuance of the powers and authorities for
that purpose given in and by an act passed in
the fourth and fifth years of the reign of her
present Majesty Queen Victoria, intituled "An
Act for the Commutation of certain Manorial
Rights in respect of Lands of Copyhold and
Customary Tenure, and in respect of other
Lands subject to such rights, and for facilitating
the Enfranchisement of such Lands, and for
the Improvement of such Tenure," the said
parties above-named, lord and tenants of the
said manor to the number of [or being all the
tenants of the said manor], do hereby contract
and agree for the enfranchisement of the lands
described in the schedule hereunder written,
and that they will effect such enfranchisement
by a schedule of apportionment, to be here-
after prepared. As witness the hands of the
said parties, the day and year first above written.

THE SCHEDULE ABOVE REFERRED TO.

This should contain the following information
in columns.

1	2	3
Tenant's Names.	Lands to which ad- mitted, and the sub- ject of enfranchise- ment.	Date of Admission.

No. 14.

DECLARATION BY STEWARD AS TO VALUE AND INCIDENTS.

Manor of, &c. } A SCHEDULE of the several particulars as required by the Copyhold Commissioners, with respect to certain Copyhold or Customary lands,
proposed to be Commuted (or Enfranchised.)

1	2	3	4	5	6	7	8	9
Names of Tenants.	Copyholders, Customary Tenants, or Freeholders.	Residences.	Descriptions.	Age.	When more than one Tenant, whether admitted as Joint Tenants, or how otherwise.	Descriptions of Tenements on Court Rolls.	Copyhold, Customary or Freehold.	Parish or Parishes in which situated.

(See next page.)

FORM No. 14 (continued).

10	11	12	13	14	15	16	17	18	19
If assessed to Poor-rate jointly with other property, enter quantity of property in Assessment, (as to Tenements subject to Fines depending on annual value.)	Total Assessment. £ s. d.	Annual Value of Quit Rents, or Free Rents. £ s. d.	Whether Tenements held at Fines arbitrary on death or alienation, at Fines certain, and what amount, or how otherwise, and amount of relief and when payable.	Whether subject to Heriots and low.	Amount received for each of the 3 last Heriots for each Tenement.	Whether subject to rights in Timber, and what.	Peculiar Customs.	Changes in Tenants during last years where Fines payable on death or alienation.	Other Remarks.

I declare the above to be a true and correct Statement, according to my judgment and belief, of the several matters and things above-mentioned.
Dated, &c.

(Signed) *A. B. Steward of the said Manor.*

No. 15.

DECLARATION BY VALUER AS TO VALUE OF LANDS.

Manor of, &c. { A SCHEDULE by the undersigned valuer, as required by the Copyhold Commissioners, with respect to certain copyhold or customary lands proposed to be commuted (or enfranchised.)

1	2	3	4	5	6	7	8
No.	Names of Copyholders and Customary Tenants desirous of commuting (or enfranchising).	Description of Tenements to be commuted or enfranchised.	Explanatory Observations as to Descriptions.	Assumed Annual Value of Fines, where Tenements held at Fines certain. £ s. d.	Annual Value of Tenements held at Fines arbitrary. £ s. d.	Total Value £ s. d.	REMARKS.

I declare the above to be, according to the best of my skill and judgment, the true annual value of the above-named copyhold and customary lands, holden of the above manor.
Dated, &c.

Signed)

J. H. Valuer.

No. 16.

POWER OF ATTORNEY.—See s. 12.

Manor of
County of }

I, A. B. of &c. lord, [or copyholder, customary tenant, or freeholder, as the case may be] of the said manor, do hereby appoint C. D. of &c., to be my lawful attorney, to act for me in all respects as if I myself were present and acting in the execution of an act passed in the fourth and fifth years of the reign of her present Majesty Queen Victoria, intituled "An Act for the Commutation of certain Manorial Rights in respect of Lands of Copyhold and Customary Tenure, and in respect of other lands subject to such rights, and for facilitating the Enfranchisement of such Lands, and for the Improvement of such Tenure."

Dated this day of one thousand eight hundred and

(Signed) A. B.

SUPERIOR COURTS.

Lord Chancellor's Court.

PROVISIONS BY WILL.—ADVANCEMENTS BY SETTLEMENT.—ADEMPTION PRO TANTO.

The rule of equity against double portions from a parent to a child, prevails also where a relative assumes the duties of a parent towards children; advancements made by either in his lifetime for the benefit of the children, are to go in ademption or satisfaction pro tanto only, of provisions made for them by his previously executed will.

Circumstances and principles on which a person is held to have placed himself in loco parentis. The question depends on the intention of the donor, whether his gifts are mere gifts or portions, and the intention is to be collected from his conduct towards the children, or from the nature of the provisions made for them by him. Not necessary to shew that he assumed all the duties of a parent, or fully performed those which he did assume. He must be held to be in loco parentis as well at the date of the will as at the time of the advancements. All the cases examined, and the reports of Hartop v. Whitmore, and Clarke v. Burgoyne, corrected.

Edmund Lockyer, formerly a conveyancing barrister in Plymouth, deceased, made his will in 1823. He had two children, a son, Edmund, the father of the defendants, and a daughter, Eleanor Margaret, the wife of Captain Pym, by whom she had three children, Frederick and Edmund Pym, the plaintiffs, and Eleanor, who married Mr. Drake. The testator by his said will bequeathed 5,000*l.* to trustees, in trust, subject to an annuity of 40*l.* to Mrs. Pym for her life, to pay the interest for the maintenance of his grandson Frederick, until his age of twenty-one, then to him for life, and after his death to divide the capital equally among

his children, that is, sons at their ages of twenty-one, and daughters at that age, or marriage, with maintenance in the mean time; and if there should be no such children, the 5,000*l.* was to fall into his residuary personal estate. The testator bequeathed another sum of 5,000*l.* to trustees, on similar trusts for the benefit of his grandson Edmund and his children, and another sum of 6,000*l.* to trustees on similar trusts for the benefit of his grand daughter Eleanor, and her children, her life estate therein to be enjoyed by her to her separate use; and the residue of his estate he gave equally between his six grandchildren, being children of his said son and daughter. In 1831, Frederick married, and by his marriage settlement, to which the testator was a party, after reciting the intended marriage, and that the testator, as the grandfather, had agreed to invest a sufficient sum to purchase 2000*l.* in the 3 per cent. reduced annuities, upon trusts after declared, and that such sum had been purchased in the names of trustees, the trusts were declared to be for Frederick for life, and after his death for his intended wife for life, and then to their children, as they or the survivor of them should appoint; and in default of appointment, equally between the children; and in default of children, for Frederick absolutely. Edmund also married in 1831, and by the settlement on his marriage, to which the testator was party, after reciting that he as grandfather had agreed to convey certain premises for the purposes after mentioned, and to execute a bond for 3000*l.* to trustees payable six months after his own death, which sum was to be held by them upon the trusts of the settlement. And by the settlement the lands and premises were settled to the use of Edmund for life, remainder to his intended wife for life, remainder to the children of the marriage, as the parents or the survivor of them should appoint, and in default of appointment to the children equally; and on failure of children, to Edmund in fee. Similar trusts were declared of the 3000*l.* secured by the bond. Captain Pym, the father, was not a party to either of these marriage settlements. His daughter, the said Eleanor, was married in the same year to Mr. Drake, and thereupon the testator bound himself to lay out in the names of trustees 4000*l.* in the public stocks, the interest of which was to be paid to himself for his life, and after his death, to Mr. and Mrs. Drake, or the survivor of them for life, then to their issue equally; and if no issue, the principal sum to be subject to the wife's appointment: And he further agreed to pay to them 150*l.* a-year for the next three years, and 100*l.* a-year afterwards during his own life. Nothing further was done in respect to this settlement, except that the 150*l.* a-year was paid up to the testator's death. (He died in 1836, without altering his will.) The father of the lady was a party to this settlement, and he agreed to pay her 50*l.* a-year for three years, which was paid accordingly.

On the death of the testator his executors and residuary legatees refused to pay the lega-

cies of 5000*l.*, 5000*l.*, and 6000*l.*, apprehending that they were adeemed or satisfied by the advancements on the respective marriages, whereupon the suit was instituted, and a decree was made, referring it to the master to inquire, among other things, as to the manner in which the testator had generally acted towards his said grandchildren. The master found, chiefly on the evidence of the father, that the three children had been always maintained by himself, except that the grandfather, being desirous that Frederick should go into the church, agreed to pay his college expences; and he paid the tutor's bill and part of his personal expences, and 200*l.* a-year from the time of his ordination to his marriage; and 100*l.* a-year after his marriage. The testator being desirous that his grandson Edmund should be a solicitor, he paid the stamp duty on his articles, and the premium to the solicitor to whom he was articulated, and the costs of his admission afterwards; and in the mean time some small sums for pocket money, and after his admission the fee with him to a London conveyancer, and allowed him money for his lodging and living in London, but not enough. As to the grand-daughter, the Master found that the testator did not pay anything towards her education. He held constant intercourse with all his grandchildren, making them presents and treating them much like a parent. He was referred to in their respective marriages as the person whose consent was deemed necessary, but they all lived generally with their father, who was always in a condition to maintain them, and was never exempt from their maintenance until they were married, &c. The cause coming before the Vice-Chancellor upon this report and for further directions, his honor held that the said provisions made by the testator upon the marriages of his grand-children were not adoptions or satisfactions of the legacies bequeathed to them by his will. The defendants appealed from that decree, and the question was argued in this Court for the greater part of three days, in April, 1840. A great number of cases then referred to on both sides will be hereafter mentioned.

The Lord Chancellor gave his judgment the 25th of November last. His Lordship stated the provisions made by the will, and those made on the respective marriages of the grandchildren, and the facts found by the Master's report, and said "This case involves much of the doctrine on which I acted in *Percy v. Mansfield*,^a and in so far as such doctrine is applicable to the facts of this case, it must govern my decision. I have not seen any reason to doubt the accuracy of that doctrine, founded as it is on a late decision of the House of Lords;^b and on preceding cases. I shall therefore consider it as the law of this Court, unless otherwise instructed by the authority of that House. All the decisions upon questions of double portions depend on the declared or presumed intention of the donor.

The presumption in equity is against double portions; because it is thought probable, when the object appears to be to make a provision, and that object has been effected by one instrument, the repetition of it in the second should not be intended as an addition to the first; but the second provision is presumed to be intended as a substitution for the first. When the gift is mere bounty, there is no ground for raising any presumption of intention from its amount, though such amount be comprised in two or more gifts. The first question is, whether the sums given are to be considered as portions, or as mere gifts, and upon this subject certain rules have been laid down, all intended to ascertain and work out the intention of the donor. In the case of a parent, a legacy to a child is presumed to be intended to be a portion; because, providing for a child is a duty which the relative situation of the parties imposes on the parent. That duty, which is imposed on the parent, may be assumed by another who thinks proper to place himself in the place of a parent. When that is so, the same presumption arises against his intending the first gift to take effect as well as the second, because both in such cases are considered to be portions. Whether the donor had for this purpose assumed the office of a parent so as to invest his gift with the character of a portion, may be proved by external evidence, such as the conduct of the donor towards the children, or by internal evidence of the nature and terms of the gift. If the evidence is to be drawn from the conduct of the donor towards the children, it is not necessary to shew that he assumed all the duties of a parent, or that he fully performed those he had assumed; the question being whether the facts proved lead fairly to the conclusion that he intended to provide portions, and not gifts for the children. Upon this point, *Percy v. Mansfield*, founded on *Carver v. Borlase*,^c and many other cases, is conclusive. Such evidence of general conduct towards the child is of far less importance than that which relates to the nature of the provision, whether the intention be found in the instruments containing the gifts, or in extrinsic circumstances. The general conduct of the donor towards the family, particularly towards the children, may very properly be weighed in the consideration of his object and intention. It may be assumed that the father of these children had but slender means of making permanent provision for them, as in two of the three marriages he provided nothing, and in the third only agreed to pay 5*l.* per annum for three years; and the Master's report states, upon the authority of the father himself, that "the grandfather directed and controlled the children with an authority equal to his own, and that he was referred to in the cases of the marriages as the person whose consent was indispensably necessary, and as the principal party to the pecuniary arrangements." Such being the position in which the

^a 15 L. O. 121, and 3 Myl. & C. 359.

^b *Durham v. Wharton*, 3 Clark & F. 146.

^c 2 Russ. & Myl. 301.

grandfather had placed himself with respect to the grandchildren, we find him by his will making provisions for them, and for the children of his son, not giving them certain legacies of which they, or others for them, might hereafter regulate the disposal, but taking upon himself to do so in anticipation of their marriages, settling the sums given so as best to provide for them and for their children. Upon the marriage of Frederick, the grandfather appears as the only contracting party on his side as to the provision to be made, and the settlement recites that he, as grandfather, had agreed to invest the sum stated. Upon the marriage of Edmund, the same course was followed, though the same words were not used in the settlement, but instead of investing the sum in the name of trustees, as was done on the marriage of Frederick, he entered into a bond to pay the sum agreed to be settled six months after his death. Upon the marriage of Eleanor he first proposed, as appeared from the correspondence set forth in the Master's report, to bind himself, and to leave the sum agreed upon, by his will; but he agreed, instead of that, and in order to save the legacy duty to his family, to invest it with certain bankers, which he omitted to do. In all these arrangements, the sums given were settled, or agreed to be settled as nearly as possible, in the same way as he had provided by his will, which, Lord Eldon, in *Trimmer v. Bayne*,^d seems to think would of itself be sufficient to establish the character of a portion. That the sums settled, or agreed to be settled, were portions in every sense of the word, cannot be doubted; and it is equally clear that the corresponding sums given by the will, though different in amount, are of the same character. From the necessities of the family, or from his own free choice, or probably from both, he assumed the task, and provided portions for the children, regarding in the distribution of his property, the number of those who stood in the same degree of relationship. This task so undertaken, he in the first instance proposes to carry into effect by his will, but on the marriage of these children he comes forward in some instances to perform, and in others to bind himself to perform in part, what he had so assumed the office to do. In what respect, for the purpose of trying the intention of the donor, does this conduct differ from that of a father? The father, as well as the grandfather, was at liberty to make what distribution he thought proper of his property; but having once made the distribution by giving certain sums to each child, where is the probability that on the marriage of the children there should arise any intention of disturbing the previous scheme of distribution, and giving to each child the sum then settled in addition to what had been before assigned as his portion, to the necessary prejudice of all the other children? It is to avoid such consequences, so little likely to be intended by the donor, that the presumption against double portions

arises, which, though it may in some instances defeat the intention of the donor, is in my opinion calculated in general to effect it.

I am of opinion the grandfather has, as to the pecuniary provisions for the children of this family, put himself in *loco parentis*, and that the instruments themselves prove that the legacies and sums settled were intended as portions; therefore the presumption against double portions arises, and that the several settlements or agreements on the marriages of the children operate as adoptions of the legacies. In *Ex parte Pye*,^c Lord Eldon seems to allude to the possibility that such second portions may be treated as adoptions *pro tanto*. Such a limited application of the rule would, I think, in most cases carry the intention of the testator completely into effect. I am not aware, however, of any case in which that has been acted upon, but as a doubt has been suggested by Lord Eldon, and as the matter has not been argued before me upon that point, if counsel think they can make any thing of it, I shall be glad to hear an argument on it. With respect to two of the portions, the testator at the time of his death was only under an obligation to pay them. If the will had been made after the obligation had been incurred, the legacies would have been in satisfaction of the obligation. It would have been strange if the will having been of an earlier date, the obligation would not have been in adoption of the legacies. The order of the *Vice Chancellor* must be reversed so far as it is inconsistent with this view of the case, and with costs.

Mr. Bethell (of counsel for the plaintiffs) asked that the order may not be drawn up until he had time to consider with his clients the suggestion of his lordship of arguing that the settled portions were only adoptions *pro tanto* of the provisions in the will.

The Lord Chancellor assented, and further said, "It is a very important point; I have no doubt in many cases the rule gives double portions; for instance, where a sum of 5000*l.* has been given by a will as a portion, the rule as it stands in most or in all of the cases, I believe, is that a much less sum is given on the subsequent marriage, though the marriage destroys the gift of the 5000*l.*; that appears to me probably to be very contrary to the intention of the donor. It is very natural he should not wish the party to have both, but he may consider the portion as a performance *pro tanto* of the intention. To say it destroys the larger gift, is, in all probability as great prejudice to that child, as it would be to the others to consider that both portions are to be taken out of the estate.

The point was argued accordingly, on the 23rd of January last, by Mr. Bethell and Mr. Lowndes for the plaintiffs, and Mr. Richards for Mrs. Drake, in support of the proposition of partial adoption only; and by Mr. Wigram and Mr. G. L. Russell for the supposed rule of total adoption.

In addition to the cases cited and examined

^d 7 Vesey, 515—16.

^c 18 Vesey, 140. See p. 151.

by the Lord Chancellor in his judgment, the learned counsel also cited and discussed the following cases:—*Clark v. Lucy*, and *Pepper v. Winever*, both in 8 Viner's Abr. pp. 154 and 158; and both favoring the *pro tanto* ademption; *Husband v. Husband*, 1 Vern. 95, and *Jesson v. Jesson*, 2 Vern. 255; *Ward v. Lant*, 1 Pre. Ch. 182; *Isard v. Hurst*, Freeman's Rep. 223; *Bellam v. Uthwatt*, 1 Atk. 426, (the editor's note); *Ellison v. Cookson*, 2 Bro. C.C. 30; *Roome v. Roome*, 3 Atk. 181; *Thelluson v. Woodford*, 4 Madd. 420; *Booker v. Allen*, 2 Russ. & Myl. 270; and *Durham v. Wharton*, 3 Myl. & K. 479, and S. C., on appeal, 3 Clark & F. 146.

Pym v. Lockyer, Sittings at Lincoln's Inn. June, 1841.

[The Lord Chancellor's final judgment will be given in our next number.]

Vice Chancellor's Court.

PRACTICE.—ADVANCING CAUSE FOR HEARING.

If it is apparent that considerable injury may be done to a party by the hearing of a cause being delayed, and that no great detriment will accrue to the other suitors of the Court by its being advanced, the Court will order it to be heard at an early day, although an application for the purpose may be opposed by the other parties to the cause, and a suit may be pending in another Court, the decree in which might render further proceedings unnecessary.

The bill in this case was filed for the performance of certain articles of partnership, entered into between the defendant and the late father of the plaintiff, whereby, as it was alleged on the part of the plaintiff, the defendant agreed, on the decease of the plaintiff's father to take the plaintiff into partnership with him in the place of his father. The defendant denied that there was any such agreement, and had filed a bill for the purpose of impeaching the articles, which he had marked to be heard at the Rolls, and a motion was now made on the part of the plaintiff to have his cause advanced to be heard at an early day.

K. Bruce and Craig for the plaintiff, said, that it was important for his interest that he should be admitted into the partnership as soon as possible, in order that he might learn the business, which was that of a brewer. It was also essential that the cause should be heard speedily, for otherwise the term for which the agreement was to subsist might run out, and then there could be no decree. *Hoyle v. Livesey*, 1 Mer. 381. The plaintiff's bill was filed in February, 1840, and the answer put in in the May following, and yet the defendant's bill at the Rolls for impeaching the articles was not filed till December, 1840, so that it was a mere pretence to say that the defendant ever expected that cause to be heard first. In *Hutchinson v. Stephens*, 2 Myl. & Cr. 452, the

Chancellor observed, it was strange to say that the plaintiff had such a vested interest in the unavoidable delays of the Court that he was entitled to prevent the cause coming on till all the causes which had been set down before it, — and which might be long litigated causes, — should have been disposed of, and that observation was strictly applicable to the present case. In fact, the only question was whether by taking it out of its turn, the interests of the other suitors were likely to be prejudiced.

Wigram and Ede, for the defendant Hall, contended that there was no good reason for taking the cause out of its turn, and it was very desirable that the decision of the Master of the Rolls should first be obtained in the other suit; for if the articles were declared void, the hearing of this suit would be unnecessary. The business was being carried on by the trustees appointed by the plaintiff's father, and it was not pretended that any complaint could be made against them on the ground of mismanagement, so that the plaintiff's interests were not likely to suffer by the delay of a few months in the hearing of this cause. It was clear also the plaintiff was not originally so anxious for a decision, for he attained twenty-one in April, 1839, and did not file his bill till April 1840.

Richards and Chandless, Stuart and Stevens, for the trustees and the other defendants.

The Vice Chancellor said he thought this was a case where, having regard to the general interests of the suitors, he might advance the cause. The House of Lords was constantly in the habit of advancing causes, where particular circumstances seemed to require it, and he did not think a different rule ought to prevail elsewhere. It was objected that the suit pending before the Master of the Rolls was for the purpose of putting an end to the agreement, but the question was whether that suit had been brought forward in such a manner as entitled the plaintiff in it to prevent this suit from being heard, and His Honor said he did not think it had, for the plaintiff did not file his bill till December 1840. With regard to the suit now under consideration, he thought there was no reason for complaining of delay on the part of the plaintiff, who only attained twenty-one in April, 1839, and filed his bill in the February following, and he should therefore make the order, the plaintiff paying the costs of the application.

Evetts v. Hall and others, June 14th, 1841

THE EDITOR'S LETTER BOX.

We believe we have in the present and a recent number given the names of all the lawyers in the New Parliament. We are obliged by the information received on this subject.

We are not aware of any proceedings, relating to the "Attorney's Clerks' Prize Fund."

We hope to find room for several deferred letters in our next Number.

The Legal Observer.

SATURDAY, JULY 31, 1841.

— “ Quod magis ad nos
Pertinet, et nescire malum est, agitamus.

HORAT.

SHOULD THE ENFRANCHISEMENT OF COPYHOLDS BE COMPULSORY?

THE Copyhold Act of the last session has brought more immediately under public consideration the question whether the enfranchisement of copyholds should be compulsory on lord and tenant, one or either. We have already repeatedly expressed our opinion that it should be compulsory on the lord; and we have, in former volumes, brought forward our evidence to support our opinion at considerable length. We have no doubt that much good will be done under the present act: commutation of the lord's rights, which it has introduced, if it be extensively adopted, will indeed be the best preparatory step towards a general enfranchisement that we can conceive, by relieving the copyhold tenure of its arbitrary incidents, and reducing them to a certainty in value which can be easily estimated, and the payment of which can be easily adjusted. So far, then, so well; but we must not abandon the principle for which we have always contended, and for which, we believe, there will shortly be a very general demand throughout the country.

We revert to the subject now, because we shall take every opportunity of reiterating our opinion when occasion arises; and we find the occasion in the publication of one of the many editions of the Copyhold Act, in which a contrary opinion is avowed. The work to which we allude is by Mr. Caswall,*

who has filled the office of steward of the manors of the Courts of the Bishop of Salisbury. This gentleman, in his preface, admits the present deterioration of copyhold lands — “lack of timber, and general appearance of decay.”

“But let any man consider,” he continues, “how this property is usually managed, especially in ecclesiastical and collegiate manors, and he will see that the fault lies not so much in the system, which he is too apt to condemn without a hearing, as in the strange out-of-the-way fashion in which it is worked out. For example, to a manor or number of manors of the above description, a steward is appointed, usually a professional man, who resides at a distance. He goes down periodically, or at irregular intervals, to hold a court, and hears of the property, during the few minutes' interval of business that may occur, just as much as the parties principally interested chuse to tell him. It is in the nature of all things human, *if neglected*, to fall to decay, and copyhold lands do not claim exemption from the common lot. But only let lords of manors set to work in earnest, and bestow ordinary care upon these estates, and they will soon become creditable to themselves, and not less so to those holding under them. * * It is only from not having their attention so directed, that lords and stewards have gone on from generation to generation *without maintaining for copyhold lands that forward position in the march of improvement which might fairly have been expected from them.*” pp. x, xi.

Now, admitting that it is quite clear that lords of manors and their stewards neglect their rights (which has been disputed by

Enfranchisement. By Alfred Caswall, Esq., Barrister. 3d Edit. 1841.

* A Treatise on Copyholds and Copyhold
VOL. XXII. — NO. 667.

some, who consider they are sufficiently on the alert to enforce them) we conceive there is a very insufficient reason for the admitted decay and dilapidation of the lands. If it is not the lord's interest to look after these lands, it is surely the tenants', and why do they not improve their lands? Why do they allow them to fall into decay? Simply, because if they improve them, the improvement, or a portion of it, is enjoyed by others, according to the vice of the tenure; because the rights of the respective parties are uncertain and unsettled, and because a man, before he lays out his money, wishes to be certain that he shall reap the benefit of the outlay. It is to this cause, and not, as we think, to any want of looking after, that the comparative unimproved state of copyhold lands is to be traced.

Mr. Caswall then, in the body of his work, enters more fully on the subject. After giving the Report of the Select Committee of 1838 (in favour of the compulsory principle) at length, he sets it very quietly aside by the following remark:—"It would be invidious to use harsh terms in speaking of the above Report, prepared as it was by respectable and independent country gentlemen, who gratuitously gave up their time and attention to a (to them probably) dull and uninteresting subject."

Now how Mr. Caswall, having the Report and the Minutes of Evidence of the Committee before him, comes to this conclusion, we cannot divine. These "respectable and independent country gentlemen" who thus gave up their time to this "dull and uninteresting subject," was, as appears by the document which he quotes, Sir John (now Lord) Campbell, the then Attorney General, in the chair, Sir Robert Peel, Sir James Graham, Mr. Duckworth, Mr. Hayter, Mr. Aglionby, Mr. Shaw Lefevre, Mr. Stewart and others, who can hardly be said to belong to the class of country gentlemen. We are not, therefore, disposed to have the Report of the Committee set aside after this summary fashion.

We are glad, however, to find Mr. Caswall, a little further on, himself admitting the necessity of the compulsory principle being applied to some kinds of copyhold incidents.

"I think the principal grievance in copyhold tenures are heriots and arbitrary fines; and I should be glad to see the first removed *in toto*, and the latter reduced to a fine certain, either by the plan suggested by Mr. Rouse, or by the commutation proposed by the Lord Redesdale,—giving parties the option to select one or the other, as convenience or fancy

may dictate: *thus far, after much consideration, and perhaps rather in contradiction to my previously expressed opinions, I am willing to advocate compulsory enfranchisement; but farther than this I think it is utterly uncalled for, inexpedient, and unjust.*" p. 94.

Mr. Caswall is willing, therefore, to make the commutation portion of the Copyhold Act compulsory on the lord, which is carrying the principle of compulsion further than it is carried by the present act; and we are quite satisfied, that after some further consideration, he will see that if the parties wish a complete enfranchisement, and will pay the lord the fair value of his rights, they should be able to obtain an enfranchisement, especially when we find him in the same page expressing the following opinion:—

"It is a dear and proud privilege to stand upon our native soil, subject, under the laws of the realm, to the beck and interference of no earthly man, and this can only be under that *best of titles, FREEHOLD.*" p. 94.

When, therefore, Mr. Caswall takes upon himself the championship of the copyhold tenure, we think, he need not go further than his own book to satisfy himself of the unsoundness of his cause. Indeed, in writing it, he appears to us to have converted himself. We are for no violation of the laws of property—no spoliation of private rights; but we do think that the copyhold tenure is in many ways a public grievance, and that if a proper compensation is given to the lord, he should be obliged to exchange it "for the best of tenures,—freehold."

SEARCHES FOR JUDGMENTS AFTER 1ST OF AUGUST, 1841.

WE have already* stated what we conceive to be the correct rule with respect to searches for judgments previous to the 1st of August 1841; but after that period, a new rule will obtain, which it will be useful for our readers to bear in mind. We shall, therefore, endeavour to state the law on the subject.

By statute 1 & 2 Vict. c. 110, s. 19, no judgment of any of the Superior Courts, nor any decree or order in any Court of Equity, nor any order in bankruptcy or lunacy, shall, *by virtue of that act*, affect any lands, tenements or hereditaments as to purchasers, mortgagees, or creditors, unless and until a memorandum or minute containing the name, and the usual or last known place of abode,

* See 21 L. O. 22, 116, 167.

and the title, trade, or profession of the person whose estate is intended to be affected thereby, and the Court and the title of the cause or matter in which such judgment, decree, order or rule shall have been obtained or made, and the date of such judgment, decree, order or rule, and the amount of the debt, damages, costs and monies thereby recovered, or ordered to be paid, shall be left with the Senior Master of the Court of Common Pleas at Westminster, who shall forthwith enter the same particulars in a book, in alphabetical order, by the name of the person whose estate is intended to be affected by such judgment, decree, order or rule, and such officer shall be entitled for any such entry to the sum of 5s., and all persons shall be at liberty to search the same book on payment of the sum of 1s.

By stat. 3 & 4 Vict. c. 82, s. 2, reciting s. 19 of 1 & 2 Vict. c. 110, and that doubts had been entertained whether a purchaser, mortgagee, or creditor having notice of any such judgment, decree, order or rule as aforesaid, would not in equity be affected thereby, notwithstanding such a memorandum or minute of the same, as in the said act is mentioned, might not have been left with the Senior Master of the Common Pleas, enacts "that no such judgment, decree, order or rule as aforesaid, shall, by virtue of the said act, affect any lands, tenements, or hereditaments, at law or in equity, as to purchasers, mortgagees, or creditors, unless and until such a memorandum or minute as in the said act in that behalf mentioned, shall have been left with the Senior Master of the said Court of Common Pleas at Westminster, any notice of any such judgment, decree, order or rule, to any such purchaser, mortgagee, or creditor, in anywise notwithstanding."

By stat. 2 Vict. c. 11, s. 1, the docketting of judgments is abolished from the time of the passing of the act (4th of June 1839) and by s. 2 it is enacted, that no judgment already docketted shall, after the 31st of August 1841, affect any lands, tenements, or hereditaments as to purchasers, mortgagees, or creditors, unless registered under 1 & 2 Vict. c. 110; and by s. 4, it is enacted, that all judgments, &c. which shall have been registered under statute 1 & 2 Vict. c. 110, or which shall hereafter be so registered, shall, after the expiration of five years from the date of the entry thereof, be null and void against lands, tenements, and other hereditaments, as to purchasers, mortgagees, or creditors, unless a fresh memorandum is left within

five years before the right of the purchasers, &c. accrued.

It will therefore be unnecessary, after the 1st of August 1841, to search the dockets for judgments, and the search in the registry of the Common Pleas will commence with the 1st of October 1838, or (after the 1st of October 1843,) with the commencement of the five years preceding the time of search. This search will disclose all judgments, rules, decrees, orders and *lites pendentes*, which last are indexed in a separate book. Whenever it is expedient to search for judgments against any other person than the vendor, (and this on account of the shortness and increased facility of the search, will be done more often than formerly) the search should not be dispensed with on the ground that such person had no interest in the premises within five years preceding the time of search; for the right of a judgment creditor may be kept alive for a much longer period. But the search in no case need be carried back more than five years.^b

The alteration in the law is thus also shortly stated by Sir E. Sugden.^c "By 2 Vict. c. 11, s. 2, it is provided that no judgment already docketed under the act of Will. & Mary shall, after 1st of August 1841, affect any purchasers, mortgagees, or creditors, unless and until such memorandum thereof as is prescribed by the 1 & 2 Vict. c. 110, is left with the Senior Master of the C. P.; so that in a short time it will be necessary to search the new register only; and it is further provided (s. 4), that all judgments, decrees, rules or orders, which had been registered under 1 & 2 Vict. c. 110, or which thereafter should be so registered, are, in order to bind purchasers, mortgagees, or creditors, to be again registered every five years." The result, therefore, will be, that after the 1st of August 1841, the search will in any case be confined to five years."

NOTES ON EQUITY.

PRODUCTION OF DOCUMENTS.

If the title of the plaintiff is denied by the answer, he is not entitled to the production of any of the documents in the defendant's custody, except such as will show his title. This has been decided by Lord Cottenham, C., in the cases of — *v. Flint*, and in *Adams v. Fisher*, 3 Myl. & Cr. 526. The same principle has been followed by the *Vice Chancellor* in a late case, in which the judgment was as follows.

^b 1 Jarm. Byth. 110, 3d edit.

^c 2 Sug. V. & P. 403, ed 10.

"It will be seen that if the defendant says merely that he *believes* that the documents will not shew the plaintiff's title, this will not be sufficient:—Let me put this case. Suppose that a person claiming to be a creditor of a testator, had filed a bill against the executor, and said that he was a creditor, and that the executor had got, in his possession, all the papers and writings that ever belonged to the testator, and, if they were produced, it would appear that he was a creditor; and that the executor, by his answer, denied the assertion that the plaintiff was a creditor; and, moreover, went on to state that he had all the papers of the testator in his possession, but denied that any of them would make out the fact that the plaintiff was a creditor; could this Court order all or any of those papers to be produced? And yet it is perfectly possible that it might be all fallacious, and that the documents, if they were produced, would prove the plaintiff's case. What influences my mind most, is that passage in the answer in which the defendant has not, in my opinion, averred, with sufficient positiveness, that the documents would not make out the plaintiff's case. I confess that though, for many purposes, what a defendant states on his belief, is considered as substantially putting the fact in issue; yet, where the question depends on the materiality of the documents with respect to their contents, if the defendant does not choose to swear, positively, as he might, and as he would be perfectly justified in doing if he had read them through, and was satisfied in his own mind, that they did not contain that which would make out the plaintiff's case, but thinks proper to admit the documents to be in his possession, and then to state (in the manner in which this defendant has done) that he merely believes that they will not make out the plaintiff's case, I cannot but think that the defendant does place the matter in such a situation as to make it consistent with the fair investigation of the truth and justice of the case that the documents should be produced. And it is, therefore, on account of the particular mode in which this answer is framed, that I think the books ought to be produced. *Bannatine v. Leuder*, 10 Sim. 230. A defendant, who, in his answer, refers to a deed in the words "as by the said indenture, when produced, will appear," must produce it for the inspection, &c. of the plaintiff, although he does not crave leave to refer to it." *Welford v. Stainthorpe*, 2 Beav. 587.

THE PROPERTY LAWYER.

CONSTRUCTION OF 2 & 3 Vict. c. 29.

WE have very recently alluded to the proper construction of stat. 2 & 3 Vict. c. 29, (see *ante*, p. 225) under which an execution

against the lands and tenements and goods of a bankrupt, executed before the date of the fiat, shall be valid, notwithstanding any prior act of bankruptcy, provided the person at whose suit the execution was issued had no notice. Under this statute, it has further been held that where a trader commits an act of bankruptcy, by procuring his goods to be taken in execution, with intent to defeat or delay creditors, the execution, although levied *bond fide* by the judgment creditor, is not protected by the statute. Mr. Baron Parke said:

"I entertain no doubt in this case that the true meaning of the act of parliament is as is contended for by the plaintiffs. The object of the statute 2 & 3 Vict. c. 29, as appears by the recital, was similar in principle to that contemplated by the statute 6 Geo. 4. c. 16, s. 81. By the act of Geo. 4, all transactions entered into with the bankrupt, more than two months before the issuing of the fiat, were declared to be valid, notwithstanding any prior act of bankruptcy committed; provided the person so dealing with the bankrupt had no notice of the bankruptcy. The effect of the statute 2 & 3 Vict. c. 29, is to destroy the relation of the title of the assignees to the act of bankruptcy, not only in cases where the transaction was more than two months before the fiat, but as to all *bond fide* transactions prior to the fiat. But it is obvious that all the legislature meant to do, was to prevent transactions which otherwise were valid from being invalidated by a prior act of bankruptcy. Here the transaction is invalid in itself, and therefore void. It is a parallel case to the delivery of goods by way of fraudulent preference, in contemplation of bankruptcy, which is invalid as against the assignees, although the party receiving them may not be cognizant of the dishonest intention of the bankrupt. Indeed, it may be doubted whether this is a case which comes within the meaning of the words "*bond fide* executed and levied," which may reasonably be construed to mean where there is *bond fides* in both parties: but however this be, it is clear that the statute only meant to protect valid transactions, and to prevent them from being affected by a prior act of bankruptcy: here the execution itself is the act of bankruptcy. No doubt there must be a conversion after the title of the assignees has accrued; that is, after the act of bankruptcy; and if that be complete only upon the seizure, there was a sufficient proof of a conversion by the subsequent sale. As soon as the goods were in the hands of the sheriff, they became the property of the assignees, and they were converted by the subsequent sale. The rule must therefore be discharged." Rule discharged. *Hall v. Wallace*, 7 M. & W. 353.

ESTATES TAIL.—DISENTAILING ASSURANCES.

In a release made and executed during the present month, *A. B.* is the tenant for life, (and protector) of the first part, *C. D.* the eldest son and heir of the body of *A. B.* of the second part, and *E. F.* (the purchaser) of the third part. The purport of the deed is to defeat and destroy the estate tail and all remainders, reversions, &c. and to convey the lands to the purchaser in fee. It proceeds to show that *A. B.* (according to his estate and interest &c.) and also *C. D.*, (with the consent and approbation of *A. B.* testified &c.) in pursuance of an act of parliament passed in the third and fourth years of the reign of his late majesty King William the Fourth, intituled "An Act for the Abolition of Fines and Recoveries and for the substitution of more simple modes of assurance," did grant, bargain, sell, dispose of, alien, release and confirm unto *E. F.* in his actual possession &c. by lease for a year—and his heirs, all &c. It is optional to adopt the lease for a year; or the provisions of the recent statute, see p. 33, vol. 22, No. 654; be that as it may, it seems to be expedient rather to comply with the provisions of the statute in that respect.

A correspondent, therefore, begs leave to submit to the profession that it is inconsistent with the spirit and intent of the first mentioned act to omit the words *bargain and sell*, in releases or grants, made by tenants in tail, or owners of estate tail, for the purpose of barring them, especially as it is enacted "that every actual tenant in tail shall have full power to dispose of, for an estate in fee simple, absolute, or for any less estate, the lands entailed;" and "that every disposition of lands under this act by a tenant in tail thereof shall be effected by some one of the assurances (not being a will) by which such tenant in tail could have made the disposition, if his estate were an estate at law in fee simple absolute. Sections 15 and 40, 3 & 4 W. 4. c. 74.

The purchaser of an estate "in fee simple absolute," would never think of omitting the words "bargain and sell," and those sections surely, upon a principle of sound interpretation, cannot limit the purchaser in his release to the words "grant, dispose of, release and confirm," and in his grant, to the words "grant, dispose of, and confirm," in order to pass such an estate; it never could be the intention of the legislature to restrain a purchaser from introducing the proper words of conveyance, for the statute, merely abolishes fines and recoveries, and enables a tenant in tail, or owner of an estate tail, to make an effectual conveyance of his property, through the introduction of suitable words, by any deed enrolled, in the same manner as the owner of lands "in fee simple absolute" could do.

Y. N. N.

**CHANGES IN THE LAW,
IN THE LAST SESSION OF PARLIAMENT.
No. XIV.**

BRIBERY.
4 & 5 Vict. c. 57.

An Act for the Prevention of Bribery at Elections. [22d June 1841.]

Evidence of bribery to be given on the whole matter without first proving agency.—Whereas the laws in being are not sufficient to hinder corrupt and illegal practices in the election of members to serve in Parliament; Be it enacted by the Queen's most excellent majesty, by and with the advice and consent of the Lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, that whenever any charge of bribery shall be brought before any select committee of the House of Commons appointed to try and determine the merits of any return or election of a member or members to serve in Parliament, the committee shall receive evidence upon the whole matter whereon it is alleged that bribery has been committed; neither shall it be necessary to prove agency, in the first instance, before giving evidence of those facts whereby the charge of bribery is to be sustained; and the committee in their report to the House of Commons shall separately and distinctly report upon the fact or facts of bribery which shall have been proved before them, and also whether it shall have been proved that such bribery was committed with the knowledge and consent of any sitting member or candidate at the election.

No. XV.

TRIAL OF CONVERTED ELECTIONS.

4 & 5 Vict. c. 58.

An Act to amend the Law for the trial of Controverted Elections.

[22d June, 1841.]

2 & 2 Vict. c. 38. *Recited act repealed.*—Whereas an act was passed in the session holden in the second and third years of the reign of her present Majesty, intituled "An Act to amend the Jurisdiction for the Trial of Election Petitions:" And whereas the provisions of the said act have been found in some respects defective, and it is expedient therefore to repeal the said act, and to enact as follows: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, that the said recited act shall be and the same is hereby repealed, except as to things done or proceedings commenced under the same before the passing of this act, and which may be dealt with or proceeded in, and shall have the same effect, as if the said act had not been repealed.

2. *Suspension of 9 G. 4, c. 22, and part of 42 G. 3, c. 106, and 47 G. 3, c. 14.*—And be it

enacted, that an act passed in the ninth year of the reign of King George the Fourth, intituled "An Act to consolidate and amend the Laws relating to the Trial of Controverted Elections or Returns of Members to serve in Parliament," and also so much of an act passed in the forty-second year of the reign of King George the Third, intituled "An Act for regulating the Trial of controverted Elections or Returns of Members to serve in the United Parliament for Ireland," and also so much of an act passed in the forty-seventh year of the reign of King George the Third, intituled "An Act to amend several acts for regulating the Trial of controverted Elections or Returns of Members to serve in Parliament, so far as the same relate to Ireland," as requires the parties appearing before any select committee to interchange before the said committee lists of the votes and names of voters to which either of the parties purposes and intends to object, and statements in writing respecting the matters which either of the said parties mean to insist upon, contend for, or to object to, or as provides that no witness shall be called or examined to any thing not specified in such lists or statements, shall be suspended, and be of no force and effect until the end of the second session of the first Parliament which may be called after the dissolution of this present parliament, except as to any thing done under either of the said acts; but this enactment shall not revive any act, or part of any act, repealed by the secondly-recited act.

3. *What shall be deemed election petitions.*—And be it enacted, that every petition which shall be presented to the House of Commons within such time as shall be from time to time limited by the House, complaining of an undue election or return of a member or members to serve in Parliament, or complaining that no return has been made to any writ issued for the election of any member or members to serve in parliament on or before the day on which such writ is made returnable, or, if such writ be issued during any session or prorogation of parliament, that no return has been made to the same within fifty-two days after the day on which such writ bears date, or that any return is not according to the requisition of the writ, or complaining of the special matters contained in any such return, shall be deemed an election petition; but no election petition shall be received by the House unless at the time it is presented it shall be subscribed by some person claiming therein to have had a right to vote at the election to which the same shall relate, or to have had a right to be returned or elected thereat, or alleging himself to have been a candidate at the election.

4. *Recognizances to be entered into by petitioners.*—And be it enacted, that before any election petition shall be presented to the House, the person or persons subscribing the same, or some one or more of them, shall personally enter into a recognizance to our Sovereign Lady the Queen, according to the form given in the schedule (A.) to this act annexed, for the sum of one thousand pounds,

with one, two, three, or four sufficient sureties, either in the same recognizance or in separate recognizances, for the additional sum of one thousand pounds, in a sum or sums of not less than two hundred and fifty pounds each, for the payment of all costs and expences which any Committee of the House selected to try such petition in the manner hereinafter provided shall adjudge to be payable by the person or persons subscribing the said petition, and also for the payment of all costs and expences which shall become due from the person or persons subscribing such petition to any witness summoned in his or their behalf, or to any party who shall appear in opposition to such petition, in case such petition shall be withdrawn as hereinafter allowed.

5. *Sureties to make affidavits of sufficiency, and to be described.*—And be it enacted, that every person who shall enter into any such recognizance as surety for any other person shall testify upon oath in writing, to be sworn at the time of entering into the said recognizance, and before the same person by whom his recognizance shall be taken, that he is seized or possessed of real or personal estate, or both, above what will satisfy his debts, of the clear value of the sum for which he shall be bound by his said recognizance, and every such affidavit shall be annexed to the recognizance; and that in every such recognizance shall be mentioned the name and usual place of residence of the persons proposed to become sureties as afore said, with such other description of the proposed sureties as may be sufficient to identify them easily.

6. *Examiner of recognizances to be appointed.*—And be it enacted, that the Speaker of the House of Commons shall appoint a fit person to be examiner of recognizances; and every person so appointed shall hold his office during the pleasure of the Speaker, and shall execute the duties of his office conformably to such directions as he may from time to time receive from the Speaker.

7. *Provision for temporary disability of examiner.*—And be it enacted, that in case of the illness, temporary disability, or unavoidable absence of the examiner of recognizances, the Speaker may appoint a fit person to perform the duties of examiner of recognizances during such illness, disability or absence; and the person so appointed shall, while performing such duties, have all the powers and be subject to all the provisions herein contained concerning the examiner of recognizances.

8. *How recognizances are to be entered into.*—And be it enacted, that every recognizance herein-before required shall be entered into, and every affidavit herein-before required shall be sworn before the examiner of recognizances, or one of her Majesty's justices of the peace; and the said examiner, and also every justice of the peace, is hereby empowered to take the same; and every such recognizance and affidavit which shall be taken before a justice, being duly certified under the hand of the justice before whom they shall have been taken,

shall be delivered to the examiner of recognizances.

9. *Option of paying money into the Bank instead of finding security.*—Provided always, and he it enacted, that it shall be lawful for any person by whom the said petition shall be signed, instead of entering a recognizance for the full amount of the sums herein-before required, to pay into the Bank of England, on account of the examiner of recognizances as trustee, for the like purposes for which the recognizance is herein before required, any amount of money which he shall think fit, in a sum or sums not less than two hundred and fifty pounds each; and in such case the person by whom the petition shall be signed shall still be required to enter into his personal recognizance for the sum of one thousand pounds, but shall be required to find a surety or sureties as aforesaid for so much only of the additional sum of one thousand pounds as the sum paid into the Bank shall fall short of the sum of one thousand pounds; and no money shall be deemed, for the purposes of this act, to be paid into the Bank of England until a Bank receipt for the same shall be procured and delivered to the examiner of recognizances.

10. *Declaration of trust.*—And be it enacted, that in every case in which payment of any money as aforesaid shall have been made into the Bank of England, the examiner of recognizances shall be bound in the first place, and in such order of payment as he in his discretion shall think fit, to satisfy out of the said money all the costs and expences for securing payment of which such investment was made, or so much thereof as can be thereby satisfied, and thereafter to transfer the residue (if any), wholly discharged of the said trust, to the account of the party by whom the same shall have been paid in.

11. *No petition to be received unless endorsed by the examiner of recognizances.*—And be it enacted, that no election petition shall be received unless, at the time it is presented to the House, it shall be endorsed by a certificate, under the hand of the examiner of recognizances, that the recognizance herein-before required has been entered into and received by him, with the affidavits thereunto annexed; and, if the recognizance shall not have been taken for the whole amount, that the necessary amount of money has been paid into the Bank of England as herein-before required.

12. *Names of sureties to be kept in the office of the examiner of recognizances.*—And be it enacted, that on or before the day when any such petition shall be presented to the House, the names and usual places of residence of the sureties, when there are sureties, shall be entered in a book to be kept by the examiner of recognizances in his office; and the said book, and also the recognizance and affidavits, and bank receipt for any money paid into the Bank of England, if any, shall be open to the inspection of all parties concerned.

13. *Sureties may be objected to.*—And be it enacted, that it shall be lawful for any sitting member petitioned against, or for any electors

petitioning and admitted parties to defend the election or return, to object to the sureties, or any of them, who shall have entered into such recognizance, on the ground of insufficiency, or that a surety is dead, or that he cannot be found or ascertained from the want of a sufficient description in the recognizance, or that a person named in the recognizance has not acknowledged the same; provided that the ground of objection shall be stated in writing under the hand of the objecting party, or his or their agent, and shall be delivered to the examiner of recognizances within ten days after the presentation of the petition if the surety objected to reside in England, or within fourteen days after the presentation of the petition if the surety objected to reside in Scotland or Ireland.

[To be Continued.]

POINTS IN COMMON LAW PRACTICE, BY QUESTION AND ANSWER. No. VIII.

ARBITRATION.

140. An action may be referred to arbitration before trial, by a rule of court or by a judge's order, or by agreement. After the jury have been sworn, the reference must be an order of nisi prius.

141. In case no action be pending, the submission to reference can only be made by an agreement or bond. *Lucas v. Wilson*, 2 Burr. 701.

142. A submission to reference will be binding though not in writing. *Ansell v. Evans*, 7 T. R. 1.

143. A matter not included in an action, may be referred with the action, under the usual terms in such cases, of "all matters in difference between the parties."

144. The stat. 9 & 10 W. 3, c. 15, enacts that for promoting trade and rendering the awards of arbitration the more effectual in all cases, for the final determination of the controversies referred to them by merchants and traders and others, concerning matters of account or trade, or other matters; it shall be lawful for all merchants and traders and others desiring to end any controversy, suit, or quarrel, for which there is no other remedy but by personal action or suit in equity, by arbitration to agree that their submission of their suit to the award or umpirage of any person or persons should be made a rule of any of his Majesty's courts of record, which the parties shall choose, and to insert such their agreement in their submission, or the condition of the bond or promise, whereby they oblige themselves respectively to submit to the award or umpirage of any person or persons, which agreement being so made and inserted in their submission or promise, or condition of their respective bonds, shall or may, upon producing an affidavit thereof made by the

witnesses thereunto, or any one of them, in the court of which the same is agreed to be made a rule, and reading and filing the said affidavit in court, be entered of record in such court; and a rule shall thereupon be made by the said court that the parties shall submit to and finally be concluded by the arbitration or umpirage which shall be made concerning them by the arbitrators or umpire pursuant to such submission: and in case of disobedience to such arbitration or umpirage, the party neglecting or refusing to perform and execute the same, or any part thereof, shall be subject to all the penalties of contemning a rule of court when he is a suitor or defendant in such court, and the court on motion shall issue process accordingly; which process shall not be stopped or delayed in its execution by any order, rule, command, or process of any other court, either of law or equity, unless it shall be made appear on oath to such court that the arbitrators or umpire misbehaved themselves, and that such award, arbitration, or umpirage was procured by corruption or other undue means.

145. A parol submission to reference is not within the act 9 & 10 W. 3, c. 15; and therefore such submission cannot be embodied in a rule of court, even though the parties consent. *Ansell v. Evans*, 7 T. R. 1.

146. The death of any of the parties to the reference before the award has been made, will operate as a revocation, unless there be a stipulation to the contrary. *Potts v. Ward*, 1 Marsh. 366; 4 Bing. 435. The bankruptcy of one of the parties will not revoke the submission under an order of *nisi prius*. *Andrews v. Palmer*, 4 B. & A. 250.

147. If the executors or the assignees, proceed in the reference, the submission will be binding on them.

148. By the 3 & 4 Will. 4, c. 42, s. 39, "the power and authority of any arbitrator or umpire appointed by or in pursuance of any rule of court or judge's order, or order of *nisi prius*, in any action now brought, or which shall hereafter be brought, or by or in pursuance of any submission which shall be made a rule of any of his Majesty's Courts of Record, shall not be revocable by any party to such reference without the leave of the Court by which such rule or order shall be made, or which shall be mentioned in such submission, or by leave of a judge; and the arbitrator or umpire shall and may, and is hereby required, to proceed with the reference, notwithstanding any such revocation, and to make such award, although the person making such revocation shall not afterwards attend the reference.

149. By the same clause, the Court or any judge thereof, may from time to time, enlarge the term for any such arbitrator making his award.

150. Where an arbitrator has *inadvertently* let the time pass without enlarging it, the Court will grant an order to enlarge. *Burley v. Stevens*, 4 Dowl. P. C. 770; but where the

time had *intentionally* been permitted to pass, a breach of faith having been charged by one of the parties against the other, the Court refused to interfere. *Doe d. Jones v. Powell*, Dowl. P. C. 539.

151. The usual provisions in an order of reference with respect to costs are, that the costs in the cause are to abide the event, and the costs of the reference and of the award, are to be in the discretion of the arbitrator.

152. A submission to reference may be made a rule of court, although the submission has only provided that the award may be made a rule of court. *Soilleux v. Herbst*, 2 B. & P. 444: *Thompson v. Charnock*, 8 T. R. 520.

153. When a submission to reference has taken place in term, it may be made a rule of court on the usual affidavit and the signature of counsel to a motion paper; if in vacation, there must be a judge's order in addition.

154. If the arbitrator declines acting after a verdict subject to an award, an application must be made to set aside the verdict. *Hell v. Rouse*, 6 Dowl. P. C. 656.

155. By the 3 & 4 W. 4, c. 42, s. 41, witnesses may be sworn by the arbitrator to give evidence before him.

NOTICES OF NEW BOOKS.

The Practical Man, or Legal and General Pocket Companion; furnishing Precedents, Rules, Tables, Calculations, &c., in those matters of Professional and General Business requiring attention when reference cannot be had to the library.—Fourth Edition, with many Additions. By ROLA ROUSE, of the Middle Temple, Esq., Barrister at Law.

THE fourth edition of this very useful work has just been published. Mr. Rouse has taken great pains to make it complete, and we can conscientiously recommend it to our readers.

In the first part of the volume will be found the following forms, either entirely new, or revised and improved.

Acknowledgment of deposit in lieu of mortgage. * *Affidavit* to put off trial from absence of witnesses. *Agreements* for lease of house with variations; for lease of house, special stipulations in favor of lessor; for lease between brewer and publican; building lease; for granting an annuity; on sale of timber; * for partition; * for exchange. *Arbitrations*: — * observations as to introduction of new forms; general form of agreement to refer

* The articles marked thus (*) are entirely new, and the others are partially so,

matters in dispute to arbitration; appointment of umpire; * acceptance of umpirage: enlargement of time for award. *Bankruptcy*:—affidavit of petitioning creditor, and petition; affidavit and notice under 1 & 2 Vict. c. 110. *Bonds*:—condition to resign a living; for faithful service of clerks. *Conditions of sale*:—freehold and copyhold estates in lots; variations as to title, writings, &c.; leaseholds, with remarks as to particulars. * *Copyhold commutation table*. *Distresses and replevins*:—observations and instructions; tenants consent to landlords remaining in possession; replevin bond and warrant. *Note of hand*, with surety. *Notices*:—* to pay interest on a simple contract debt, added to an attorney's letter; to sheriff, that goods taken under *fi. fa.* only let to defendant; to an infant to return goods; * to give particulars of insurance; to deliver copy of annuity deed; * to an attorney requiring his authority for issuing process; of intention to re-purchase annuity; under recovery of tenements act; * demanding possession on expiration of tenancy under lease, &c.; of opposition to discharge of insolvent debtor. * *Partnerships*:—points to be attended to in the arranging the terms of, and taking instructions for partnership deeds. *Registration notices and dates*. *Tithe commutation*:—notice by tenant of dissent from commutation. *Warrant of attorney*:—to confess judgment; in debt. *Warranty of a horse*. *WILLS (personal property)*:—Abstract of 1 Vict. c. 26; * observations and suggestions; appointment of executors; trustees provisoes; receipts to discharge; adjustment of debts, &c.; the general management of property; for appointment of new trustees; only to be answerable for wilful defaults; * special provisions for protection of trustees; conclusion; attestation (three forms); money to wife for immediate support; money to one person; several legacies; legacies to servants; legacy to a charity; to executors; a conditional legacy; furniture, specified parts of; wearing apparel; furniture to wife; * plate, linen, and china to children; property in the funds; shares in canal companies; shares in ships; money due on bond; money due on mortgage; debt due from son-in-law; legacies not to discharge debts, and not to lapse; legacies, time of payment; annuity secured by investment in the funds; annuity to be purchased; annuity payable out of general investments; leaseholds, (full form): term in farm, farming stock &c.; gift under a power; residue to children (adults). *Real Property*:—simple devise in fee; for life and afterwards in tail general; daughters successively in tail general; sons in tail male and then in tail general, and daughters successively in tail general; in special tail; annuity charged on real estate; devise to secure annuity; several annuities charged on real estate; restrictions and provisions as to annuities; devise to two or more as tenants in common, or as joint tenants, under a power; * proviso for cesser of term; devise for life, with power to appoint to children; for life, with power to charge, &c. *Trusts*:—to invest proceeds;

* daughters shares to be settled; for maintenance and accumulation; for advancement; application of shares of deceased children; * for next of kin on death of all children, &c.; * provision against constructive conversion; * trustees to decide questions as to advances by testator; * trust to continue a partnership; * for selling partnership accounts, &c.; for presenting son to advowson; * a codicil appointing an executor in place of one deceased; * the like providing for the application of income given to a married woman, since become a lunatic.

In the Second Part the following are wholly or partially new.

Measurement and general computations:—* circles and squares of equal areas; * To estimate distance of any object on the visible horizon; * To ascertain width of river, or distance of an inaccessible object, only using four sticks. * *Weight*. To find weight from capacity and cubic inches. *Tables*. * French measures compared with English.

In the Third Part are the following additions or alterations.

Estate and Property Valuations.—Annuity on more than one life, (observations); * value of each party's interest in annuity where on three lives; leasehold rents to be charged to pay given per centage; copyholds for lives, value of adding life; church and collegiate and other renewable leaseholds, valuation of; copyhold enfranchisements; * copyhold commutation, to calculate rent-charge and yearly payment; * copyhold commutation rent-charge and fines; value of annuity on two joint lives, Deparcieux 34 per cent calculated by R. R., on Deparcieux lives, (equal lives); the like, difference of age five years; the like, difference of age ten years; the like, difference of age twenty years; the like, difference of age thirty years; the like, difference of age forty years; the like, difference of age fifty years; the like, difference of age sixty; difference in amount between yearly, half-yearly, and quarterly payments; difference in present value between do. do.; rates of premium charged by Family Endowment Society, on the assuring to each future born child the sum of 100*l.* at twenty-one.

DUBLIN LAW INSTITUTE.

We learn that a very important step has been attained in the progress of the Dublin Law Institute, which promises to give it great weight with the Profession, and to secure its permanence. We allude to the endowment which has been conferred on the Institution by the Benchers of King's Inn, Dublin; and although the grant has been made for the present year

only, there seems no reason to doubt of its continuance. The Benchers are associated, *ex officio*, as fellows of the Society; and the Lord Chief Baron, the Attorney and Solicitor General, and many of the Queen's Counsel are of the Council of the Society. The concluding lecture in the Common Law department of this Institution for the session was delivered by Professor *Whiteside*. He said,

"We have now arrived at the close of the second year of the existence of the Dublin Law Institute. Our labours have been lightened by the kind and uniform consideration you have evinced for the convenience of the professors. Although we have not effected as much as we could have desired, we have endeavoured so to direct your studies, and help you by our advice, as to induce us to hope your time has not been altogether mispent. To stimulate your attention has been our chief object, and in that, I trust, to some degree we have succeeded.

The learned professor then made some remarks on the character of the works in practical use on the Law of Evidence and *Nisi Prius*, which may be usefully laid before our readers.

"With the names of Phillips and Starkie you are familiar. The work on evidence by Mr. Phillips has been one of the most successful of modern text books,—the style is clear, the arrangement admirable, the matter carefully collected, and the author does not string cases together like the dull compiler of an index, but classifies, reasons, and from sometimes discordant materials evolves a principle. The author must have been a scholar, for his style is not vulgar or confused, and the success of his book is some proof he understood his subject. The last edition of Phillips is edited by Mr. Amos. That gentleman lectured on the common law in the University of London, and was well qualified by his character as a lawyer and a scholar to undertake his honorable task. His labours have added to the original value of the work. Mr. Amos is known to the profession, by his book on Fixtures, by several antiquarian Essays, by his republication, with learned and instructive notes of '*Fortescue de laudibus legum Angliæ*,' a work published by the learned society of the Syndics of the University of Cambridge. Fortescue, he says, was worthy to be ranked with Coke and Bacon. It is not immaterial in considering the value of a legal work to enquire into the character of the writer for general attainments. The best scholar will write the best legal work, if he applies his talents seriously to the task. Phillips on Evidence is, therefore, a book which you will read through carefully and steadily, not at momentary intervals, nor by parts; let it be the foundation of your study of the law of evidence,

the application of which you will find more difficult than you imagine. This text book, although not authority in itself, has been frequently referred to by eminent judges with approbation, and has been always treated by the bench with respect. The work of Mr. Starkie on the same subject, is written in a different method, and is useful somewhat in a different way. If you had to direct proofs for a *Nisi Prius* trial, and wished to have clearly before you each separate matter that was to be proved, you should refer to the second volume of Starkie, which you will find more technical, and for this purpose more particularly useful than the book of Mr. Phillips. I do not ask you to read through the second volume of Starkie on Evidence, but though you may not now have occasion to direct proofs, yet a better application of some portion of your time you could not make than after you have read some of the general principles of the law of evidence, to turn to the second volume of Starkie, and examine the precise mode of applying those principles to the proofs in some particular form of action, as in ejectment by an heir at law, or devisee, or the like—you will there with exactness ascertain what are the proofs to be given—how they are to be made out—what may be omitted, and what cannot be dispensed with. Mr. Starkie's is an elaborate work, the first volume you may read as you would Phillips,—the second volume refer to it in the way I have mentioned. I consider the last fifty pages of the first volume of Starkie, from page 478, where he begins to treat of the *degrees of evidence*, to the end of the book, to contain a scientific and masterly disquisition on the particular subjects of which it treats, which may be read with profit and entertainment, independently of their professional value, for the strain of moral reasoning which pervades them.

"Mr. Roscoe's little compendium is useful to carry in your bag for a hasty reference. When a question of evidence of any novelty or difficulty arises, fail not to search the twelfth volume of the last edition of Viner's Abridgment, which is confined to a single article on Evidence; and recollect there is a short title Evidence, in the fourth volume of Coyns' Digest, and in the second volume of Bacon's Abridgment. The second volume of Russell on Crimes contains the best summary of the leading principles of the law of evidence, especially relating to criminal jurisprudence, I have ever met with. It is said to have been drawn up by Mr. Williams, the learned author of the work on Executors. In connection with his chapter on the evidence of accomplices, read the valuable essay on the same subject by the late Chief Baron Joy.

"The works on *Nisi Prius* are not many. Buller's *Nisi Prius* is a work of considerable authority, from the supposed name and judicial station of the learned author; although it is very questionable by whom it really was compiled. It is now somewhat ancient; but you will find it a useful book to refer to, because there are many cases there noticed, and not

elsewhere to be met with. There are two chapters worthy a careful perusal, on writs of mandamus and quo warranto. Of course, you would not limit your inquiries on any question of *Nisi Prius* which might engage your attention. Half a century or more, if it does not wholly alter, at least makes rather a serious addition to the quantity of our law.

"There is another book on *nisi prius*, containing much excellent matter, and not so ancient as Buller. I allude to Hammond's *Nisi Prius*. This is written quite in a different style from Buller. It is more elaborate and systematic. The object proposed by Mr. Hammond is to ascertain the principles of our modern doctrines, to render more easy their future application. He leaves the law of *assumpsit* wholly untouched, and exhausts the learning applicable to trespass and replevin. On this latter form of action, Buller has six pages, Hammond one hundred and ten; and you will find a mass of ancient and valuable law on the subjects of trespass and replevin collected in this book: the author was a man of ability and research. Selwyn has long been the standard work on the law of *nisi prius*, and deservedly; for it is a careful and complete performance. The essays on *assumpsit* and covenant are in an especial degree deserving your attention. This book is for your study—for a quiet course of reading. You will quite mistake its real character if you suppose Selwyn to be a book for ready reference in court; far from it—the volumes are too large; the matter too extensive; and the index too deficient, ever to permit Selwyn to be a book of ready reference: therefore, do not carry it ever when in practice in your bag, but study its valuable contents at home, seeking for some book of immediate reference, and with an useful index for the court. Selwyn is acknowledged by the bench as a text book of authority and character. Selwyn has passed the ordeal of nine editions. There is a book supplying the defects of Selwyn, and not so elaborate or heavy, more suited for men in actual practice—a later work—called Leigh's *Nisi Prius*, in two volumes, published in 1838. It is furnished with a good index, and is a much more practical book than Selwyn, and more useful for circuit and court. It comprises the course of a *nisi prius* trial, particulars of demand, and a variety of other matters connected peculiarly with practice at *nisi prius*. The style of the book is lighter than Selwyn. It is more manageable at the moment, and is, I think, in the whole a successful work.

"I ought not to omit to recommend the last modern book I have seen; although not exactly on the subject of *nisi prius*, it contains a quantity of matter every day coming into use in the *Nisi Prius* Court, on all questions of contract: the book is skillfully arranged, clearly written, the cases well classified and most fully collected, and the whole is *admirably indexed*. Need I mention the book I so refer to is Chitty on Contracts? For both the student and practitioner this book is equally useful and instructive and necessary.

The learned gentleman then concluded as follows:—

"Endowments and professors can do little after all for a school of law—the character, number and talent of its scholars, testifying to its utility, and proving its worth, can alone give to such an institution permanent fame. In your success we shall rejoice, beholding in it the bright reward of our humble labours; industry, attention, abilities, and gentlemanly conduct, distinguished in an eminent degree the members of this class. When in the full maturity of their talents, they are called to active professional life, I have no doubt they will reflect honor on a high profession, and raise the reputation of their country; solid learning, patient industry, with quickness of understanding, will not pass unrewarded. Our profession exhibits now a degree of activity not witnessed before. Reports and treatises issuing almost daily from the Irish press, prove that we no longer depend for our entire supply of legal food upon our English brethren. The foundation of this institute was another proof we were resolved to become competitors where we had been but disciples. In our times eminent lawyers have lectured and written, and published in Ireland, what, if written and published out of it, would have spread their name and secured their reputation; but Ireland discouraged the efforts and chilled the ardour of her sons. I felt shame when I heard the learned professor of common law in the University of London, after referring to Blackstone as a book of elegant scholarship, notice, in terms of the highest commendation, the masterly lectures delivered on the feudal law, and on the laws and constitution of England, in the University of Dublin, by Professor Sullivan, "scarce inferior," says Mr. Amos, "to Blackstone." I soon procured and read the book, and felt the justice of his honest praise. On inquiring afterwards in this country, I heard that Provost Lloyd had said these lectures were read at most to three persons in the law school, and were scarcely ever heard of in the University. Would we had another Sullivan in more auspicious times to adorn, by his taste and learning, the jurisprudence of his country; but we have made a vast progress since our separation last session. The heads of our profession, the benchers of the King's Inns, learned judges, distinguished barristers, have, with a promptitude for which we are grateful, given us the high advantage of their approbation—they approve our system, they desire its continuance, they are zealous for its success. But, gentlemen, the benchers have not contented themselves with wishes and with hopes, they have endowed this school for the present year, and are not likely to lessen this substantial mark of their approval. We have here gained, indeed, a vast accession of strength and support, and our anxiety shall be proved by increased exertions to shew ourselves worthy their kindness; their object is to encourage the liberal study of a subject vast and

noble—their object shall be ours. And let us hope, for the sake of our country, that this school of law may last and flourish, a signal example of what may be effected by the persevering exertions of one man. Let us hope that hereafter professors may be heard in this place, where learned and literary labour may be ranked with the best efforts of the day, although they may fall short of the splendid labours of antiquity.”

We think the profession is largely indebted to the zeal, ability, and discretion of Mr. Tristram Kennedy, the Principal of the Institute; and it must be gratifying to him that his exertions have thus early been crowned with success.

THE STUDENT'S CORNER.

MORTGAGE.—LEASE FOR A YEAR.

THIS is merely a question (see p. 424, vol. 21.) on the statute of uses. It is well known, that that no conveyance of land can be made at Common Law, but by delivery of possession, technically called livery of seisin. The conveyance by gift, *donatio*, properly applied to the creation of an estate tail, differs in nothing from a feoffment, but in the nature of the estate passing by it. And gifts in tail are equally imperfect without livery of seisin, as feoffments in fee-simple. A's estate after the mortgage in fee was absolutely out of him at Common Law, brought back only by the performance of a condition, viz.: re-payment of the mortgage money. On breach of the condition what estate had A.? No estate, surely, at law, but only an interest, cognizable only in Courts of equity, called an equity of redemption, whereof livery of course cannot be given. The inference to be drawn from these facts, is this, that the deed of gift, (so called in the question,) cannot operate as such, from the donor's inability to deliver possession, but as deeds are construed favourably, as near the intention of the parties as the rules of law will permit, it is presumed, it might operate as a covenant to stand seised, and the second mortgage as a declaration of the use; for assurances depend for their character and effect, less upon the form of the instrument itself than upon the state of the title, the observance or non-observance of ceremonies: so that whether a deed shall operate as a feoffment, gift, release, bargain and sale, or what not, cannot be solved but by means of internal evidence.

It is asked “Is that a valid deed without a lease for a year?”

A lease for a year, operating under the statute of uses, as connected with a deed of gift, is a thing unheard of amongst conveyancers: the one is a common law assurance; the other takes effect under 27 Hen. 8, c. 110.

Powers of selling, &c., cannot be limited in a covenant to stand seised, which render it ill adapted as an assurance for settling property.

C.

REPAIRS BY TENANT FROM YEAR TO YEAR.

To the question put by “A Country Subscriber,” (*ante*, p. 121) whether a tenant from year to year is liable to repair windows broken by a violent storm? I beg to send the following answer:—A tenant from year to year is only bound to fair and tenantable repairs, so far as to prevent waste or decay of the premises, and not to substantial and lasting repairs; such as new roofing, &c. (*Fergusson v. —* 2 Esp. 590), and not being liable to general repairs, he is only bound to use the premises in a husband-like manner, but no further (*Horsfall v. Mather*, Holt, 7). And a tenant from year to year of a house is only bound to keep it wind and water-tight. A tenant who covenants to repair, is to sustain and uphold the premises; but that is not so with a tenant from year to year (*Anworth v. Johnson*, 5 C. & P. 239), neither is he liable for permissive waste, or to make good wear and tear of the premises (*Torriano v. Young*, 6 C. & P. 8). Also, where there is no express stipulation to that effect, the tenant is not bound to repair in case of fire, as the statute of 6 Anne, c. 31, s. 67, (made perpetual by 10 Anne, c. 14) provides “that no action shall be maintained against any person in whose house or chamber any fire shall accidentally begin;” and if the maxim *Actus Dei nemini facit injuriam*, can be brought to bear, (which I have no doubt) upon the question under consideration, I am clearly of opinion that a tenant from year to year is not liable to repair windows broken by a violent storm.

D. S.

FINE.

In answer to the query of Y. Z. vol. xxi., p. 441, it appears to me that E, the son of D., the right heir of A., the testator, is not barred by the fine levied by the disseisor. The ground from which I draw my conclusion is, that the estate, limited to the right heirs of the testator, after the death of B., the tenant for life, was an estate in remainder, and consequently not barred by the fine, since the statute 4 Hen. VII. And that a fine, thus levied by a stranger, would not bar him in reversion or remainder, was decided in *Margaret Pudger's* case, 9 Rep. 106 b. I presume, however, that the lapse of time, between the entry of the stranger and the death of D., did not permit a title by disseisin to accrue? If not, I clearly think that E. is not barred by the fine, or lapse of time, but that upon the ceasing of the disability of his infancy in 1839, he has ten years by stat. 3 & 4 W. 4, c. 27, s. 17, within which he may bring his action to recover the property.

ONEGA,

TIME TO PLEAD.—JUDGMENT.

The defendant's attorney in a cause obtained from the plaintiff's attorney a consent for a week's time to plead, but did not draw up and serve the order until the morning of the second day after that on which the consent was given, and an hour or two after the plaintiff's attorney had signed judgment. Is the judgment

irregular, it having been signed by the plaintiff's attorney in violation of his own consent, and contrary to good faith? or was it requisite under the circumstances to draw up and serve an order?

A. F.

SUPERIOR COURTS.

Lord Chancellor's Court.

PROVISIONS BY WILL.—ADVANCEMENTS BY SETTLEMENT.—ADEMPTION PRO TANTO.

The rule of equity against double portions from a parent to a child, prevails also where a relative assumes the duties of a parent towards children; advancements made by either in his lifetime for the benefit of the children, are to go in ademption or satisfaction pro tanto only, of provisions made for them by his previously executed will.

Circumstances and principles on which a person is held to have placed himself in loco parentis. The question depends on the intention of the donor, whether his gifts are mere gifts or portions, and the intention is to be collected from his conduct towards the children, or from the nature of the provisions made for them by him. Not necessary to show that he assumed all the duties of a parent, or fully performed those which he did assume. He must be held to be in loco parentis as well at the date of the will as at the time of the advancements. All the cases examined, and the reports of Har-rop v. Whitmore, and Clarke v. Burgoyne, corrected.

(Concluded from p. 256.)

The Lord Chancellor.—When, upon the first argument of this case, I came to the conclusion that the testator had placed himself in loco parentis, and that the effect of the portions upon the provisions by the will were therefore to be the same as if the testator had been the father of the children, I was startled at the consequence of such a decision if the rules generally received in the profession, and laid down in text books of authority, and apparently founded on the highest authority, was to regulate the application of the decision to the property. The rule to which I refer is, "that a portion advanced by a father to a child will be a complete ademption of a legacy, though less than the testamentary portion."^a I could not but feel that in the case before me, and in most others, the effect of the rule would be to defeat the intentions of the parent. A father who makes his will, dividing his property among his children, must be supposed to have decided what, under the then existing circumstances, ought to be the portion of each child, not with reference to the wants of each, but attributing to each a share of the whole, which, with reference to the wants of all, each ought to possess. If, subsequently, on the marriage of any one of them, it becomes expedient to advance a portion for such child, what reason is there for assuming the apportionment made by the will respecting what ought to be dis-

tributed, to be disturbed? The advancement must necessarily be supposed to be of the particular child's portion, as the rule assumes, as it precludes the child advanced from claiming the sum given by the will as well as the sum advanced. So far the rule is founded on good sense, and adapted to the ordinary transactions of mankind; the supplying the wants of any child by an advancement is not permitted to lessen the provisions made for that child. On the other hand, the supposed rule that the larger legacy is to be adeemed by a smaller portion, appears not to be founded on good sense, and not adapted to the ordinary transactions of mankind; and it would be subversive, in most cases, of the intention of the parent. Can it be assumed as a proposition so general as to be the foundation of a rule of property, in the absence of any express intention, that the marriage of one child, and the advancing a portion to such child, over-rides the will of the father of distributing his property among all his children, by taking from the portion given to that child, and in some extent adding to the provision of the others? Is it not, on the contrary, the usual course and practice that the father, on the child's marriage, relaxes his strict hold over it as little as possible, reserving to himself the power of disposing of the residue of the fortune destined for such child as future circumstances may require? In doing so, the father is not influenced only by natural love and affection, but he adopts a course which he may be supposed to think most beneficial for such child. Where then is the ground of the presumption that he intended, by advancing part of what he had destined as the portion of that child, to deprive that child of the remainder? The argument in favour of the proposition appears to me to be founded on the technical reasoning as to the term "*portion*," without due consideration of the sense in which it is used. The giving a portion to a child is said to be a moral debt, but of the amount of which the parent is the only judge; and though the parent has by his will adjudged the amount of that moral debt to be a certain sum, he is supposed by the settlement to have departed from the opinion so formed and expressed, and substituted the amount settled, for this only is considered a portion. This reasoning, however, assumes that the portion settled should be intended as a substitution of the former gift by the will, and such intention, if proved, would remove all doubt; but the question is, whether such intention is to be presumed in the absence of all proof? Is it not much more reasonable to suppose that the intention as to the amount of the portion is to be the same, and the sum settled is only an ademption of part of what the will declares to be the intended amount to be given? There is no reason for supposing the sum advanced to be the whole portion intended for the child. Assuming it to be a substitution for the whole, the effect of the portion advanced by a parent upon a legacy before given is called an ademption; but if the principle of ademption be applied to those cases, the consequences r

^a 2 Roper on Legacies, 318.

under consideration will not follow. The alienation of part of what constitutes a specific legacy will not destroy the legacy as to what remains; so the admitted exceptions to the general rule do not seem consistent with the existence of that part of it now under consideration. The rule is said not to apply when the testamentary portion and subsequent advance are not *ejusdem generis*. This may be very reasonable as indicative of the intention, but it is not easy to discover why an advancement of 500*l.* is to be an ademption of 1000*l.* legacy, when a gift of stock in trade, worth 1500*l.*, is not an ademption of a legacy of 500*l.*, which was held in *Holmes v. Holmes*.^b So a testamentary gift of the residue, or part of the residue, is said not to be adeemed by a subsequent advancement, because the amount was uncertain; but in that case, the child, if sole residuary legatee, takes the advancement as part of what it would have as residue if no such advancement had been made. The gift under the will operates, though diminished by the amount of the advancement. The statute of distributions, the custom of London and York, and the whole doctrine of hotchpot, proceed upon the principle that advancement by a parent does not operate as part satisfaction of what the child would otherwise have been entitled to, the object being to produce equality, not, according to the rule contended for, inequality between the children. It appears to me, therefore, that all reason, and all analogy, is against the supposed rule.

It remains to be examined whether the authorities are such as to make it my duty to act upon it; and I cannot but express the satisfaction I have felt at having had the cases so thoroughly examined, and I think the profession and the public are much indebted to those whose industry and ability have brought the real state of this question so satisfactorily before me. *Hushins v. Hushins*,^c is a case in which a smaller sum advanced was held to be an ademption *pro tanto* of a larger legacy; but it does not appear whether the decision there proceeded on the evidence of intention. *Hartop v. Whitmore*^d is a very important case, being one generally referred to in support of the supposed rule, which, if the report in Peere Williams had been correct, it never would have been as there reported. It is a case, as there reported, of a legacy of 500*l.* adeemed by an advancement of 500*l.* From Mr. Cox's notes to P. Williams, and the reports of Precedents in Chancery, and the extract from the registrar's book, it appears that the whole statement of the facts in P. Williams is erroneous. There was in that case in fact a legacy of 300*l.* in one event, and a legacy of 200*l.* in another event, and an advance of 200*l.*; it was held, the event upon which the 300*l.* legacy was to be paid never having arisen, that the 200*l.*, the event to give which did arise, had been adeemed or satisfied by the 200*l.* advance.^e *Norton v. Norton*, cited in a note to

Pusey v. Desbourris,^f appears to refer to advancements under the custom of London. And the case of *Fry v. Potter*, 8 Viner's Abridgment, 154, only proves that the supposed rule was never applied to devises of real estate. That case is principally valuable here as shewing, though only from the argument of counsel, that the supposed rule does not appear to have been heard of in 1716. The counsel are reported to have said "suppose a father by his will gives his daughter 10,000*l.* and afterwards marries her, and gives her 5,000*l.* for her portion; and then dies without revoking the will, this is clearly not a revocation of the whole devise of 10,000*l.*, but only a revocation or satisfaction *pro tanto*, that is, of 5,000*l.*; and she shall take the other 5,000*l.* by the will. In *Farnham v. Phillips*,^g the decision turned on the legacy being a residue, but that never adeemed. Lord Hardwicke said "Where a father, after making his will, advances his child with a portion as *great* or *greater* than the legacy, such a provision has always been held an ademption." The *dicta* of judges upon matters not argued directly before them have had an importance attached to them, greater than in my opinion they ought; but such expressions, falling from such a man as Lord Hardwicke, may safely be relied upon as shewing that at that time a *larger* legacy being adeemed by a *smaller* one, was not familiar in his mind. It is more important to keep this *dictum* of Lord Hardwicke's in mind, because another *dictum* of that learned judge in *Studdall v. Jekyll*,^h is relied upon in support of the supposed rule. The case itself has no application to the point now under consideration, the decision having turned on this, that the testator did not stand *in loco parentis*. Lord Hardwicke is reported to have said, "The Court to be sure leans against double portions or double provisions; and whether the portion given in the life time is less or not is no ways material." Lord Hardwicke may have meant, that so far as the portions are double, that is, the one a repetition of the other, only one shall prevail, and that it is not material whether such repetition be as to part or as to the whole of the legacy; which would make this *dictum* consistent with the former. But assuming the obvious meaning of the words is to recognize the supposed rule, the effect will be removed by the fact of the erroneous report of *Hartop v. Whitmore* having been the subject of discussion. Lord Hardwicke might naturally at the moment have assumed the report was correct. A *dictum* under such circumstances could have no weight against a contrary opinion, expressed only a few months before. The case of *Roswell v. Bennett*,ⁱ is a decision only as to the admissibility of evidence. Lord Hardwicke's observation then shews that he considered 300*l.* legacy and 200*l.* advanced as intended to the same purpose, which places this case in that class which had decided, that even where the testator is a stranger, the advance of money for the purpose for which the legacy was given

^b Bro. C. C. 555. ^c Præ. in Ch. 263

^d *Id.* 541; and 1 P. Wms. Wms. 681.

^e See also 1 Bro. C. C. 306, note.

^f 3 P. Wms. 316.

^h 2 Atk. 516; see p. 518.

^g 3 Atk. 215.

ⁱ 3 Atk. 77.

operates as an ademption. In Roper's Book,* this case of *Rosewell v. Bennett*, is cited in support of that proposition. It is also to be observed, if the 200*l.* advanced had, *per se*, raised the presumption of an intention to revoke the 300*l.* legacy, the evidence tendered would have been useless to fortify the presumption, as there does not appear to have been any evidence offered to repel it. *Clark v. Burgoyne*,¹ is another case generally relied on in support of the alleged rule of total ademption. As reported in Dickens it would be a strong authority for the purpose, for it is there represented that Lord Camden decided that an advancement of 6,000*l.* was an ademption of two legacies of 3,500*l.* each; but on reference to the case itself as extracted from the Registrar's books, a copy of which I have been furnished with, it appears instead of there having been two legacies of 3,500*l.*, there were three legacies, one of 2000*l.*, one of 500*l.*, and one of 1,000, making together only 3,500*l.*; so that this case does not bear upon the present question.

It thus appears that the only two cases in which it appears the smaller advancements had been held to be an ademption of a larger legacy, *Hartop v. Whitmore*, and *Clarke v. Burgoyne*, are inaccurately reported, and that in neither of them did the facts exist to raise any such question. In *Grave v. Lord Salisbury*,² the point decided was different. The Attorney General, in arguing for the ademption only, contended that the provision by a father to a child, whatever the provision was—that any sum of money advanced, was in satisfaction of so much of the legacy. The case of *Pouell v. Cleaver*³ was not decided upon any point applicable to the present case; but the doctrine in question was much discussed; and Lord Thurlow, in one part of his observations, supposes a possible case of a legacy of 6000*l.* being adeemed by an advancement of 5000*l.* upon the untenable ground that 5000*l.* *in present* was equally valuable to 6000*l.* under the will of a living man, assuming that advancement must be of equal value with the legacy; but this the supposed rule would repudiate, as it is not thought to regard the relative value of a legacy, and an advancement paid, both being in the nature of portions. In *Robinson v. Whitley*,⁴ the legacy was of 1000*l.*, and the sum advanced 500*l.* Sir W. Grant thought the presumption of ademption was altogether rebutted by the evidence. The counsel, who argued in support of the ademption only contended that an advancement by a father to a child was considered *prima facie* as an ademption *pro tanto* of what was given by the will; which would imply that the rule did not extend to a total ademption. In the case of *Monck v. Monck*,⁵ the sum advanced was 4000*l.*, and the legacy was 5000*l.*, and Lord Muners says, that the 4000*l.* is certainly a satisfaction *pro tanto* of the 5000*l.*, but he dismissed the

bill, because it was proved another sum of 1000*l.* had previously been paid to the legatee in part of the 5000*l.*

The question came under the consideration of Lord Eldon in two cases, *Trimmer v. Bayne*,⁶ and *Ex parte Pye*,⁷ but in neither was there any decision upon it. In the former the legacy and provision were equal, in the latter the legacy was 4000*l.*; and the advancement 3000*l.* All that was contended for was that the 3000*l.* was to be considered as an advancement in part satisfaction of the legacy of 4000*l.* Lord Eldon decided that advancement was not in satisfaction of the legacy, upon grounds which have no application to the present question. The case, therefore is important only from the observations which fell from Lord Eldon, and it is not easy to determine on which side they preponderate. He says, upon recollection of the case of *Grave v. Lord Salisbury*,⁸ Lord Thurlow remarked the doctrine of the court to be, if a portion be given to a child by will, and afterwards an advancement be made on the marriage, "that is *prima facie* an ademption of the whole, or *pro tanto*." He afterwards says, "It is the unquestionable doctrine of the Court that where a parent gives a legacy to a child, &c., and afterwards advances a portion upon the marriage of that child, though of less amount, it is a satisfaction of the whole or in part." The meaning of which I understand to be, that if the advancement be equal to the legacy, it is a total ademption; if less *pro tanto* only; and he immediately proceeds to state some cases to have gone the length of holding, that a portion though much less than the legacy, had been held to be an ademption of the whole. As the only cases in which this appears to have been decided are those of *Hartop v. Whitmore*, and *Clarke v. Burgoyne*, Lord Eldon must be presumed to have referred to them or been speaking from general recollection of what appears to have been decided by them; and if so, the expressions used can be accounted for, but all the importance of what so fell from Lord Eldon will be removed by the fact of those cases being inaccurately reported, and in neither of them can the doctrine be supposed to be established.

The result of a careful examination of all the cases is, that there is not sufficient authority to support the supposed rule, but that on the contrary the weight of authority is decidedly against it; and as it cannot be supported in principle, and is in its operation generally destructive of the interest that the parents have intended for their children, I think it my duty, notwithstanding the manner in which it has been received in the profession, to decline adopting or following it; and therefore I declare that the advancements on the respective marriages in this case are to be taken as adoptions *pro tanto* only of the legacies before given.

Pym v. Lockyer, Sittings at Lincoln's Inn. June 1, 1841.

* 1 Vol. 319.

1 Dick. 353.

^m 1 Bro. C. C. 425.

ⁿ 2 Bro. C. C. 499.

^o 9 Ves. 577.

^p 1 B. & B. 298.

^q 7 Ves. 503.

^r 18 Ves. 140.

^s Ib. p. 148—151.

Rolls Court.

COSTS. — INDEMNITY TO VENDORS UNDER
COMPULSORY CLAUSES IN PUBLIC IM-
PROVEMENT ACTS.

The commissioners of sewers for the City of London having required certain premises in Lombard Street, for improving the drainage, which were subsequently conveyed to them, pursuant to the directions contained in the Sewer Act, under which they acted, the purchase money was directed to be paid into Court, and to be laid out in the purchase of other real estate, to be settled upon the same trusts for the benefit of the parties interested as the property purchased. The act contained a clause that all reasonable expences should be paid by the commissioners. Held: that although the purchase money invested might be laid out in four distinct purchases, the commissioners were bound to pay all the expences of each purchase.

An order having been made a few months ago for a reference to the Master to ascertain whether it would be fit and proper, and for the benefit of the parties interested, to invest a sum of 700*l.*, part of the money standing to the credit of this matter, in the purchase of a certain freehold estate; and the Master having reported in favor of the proposed purchase, a petition was presented for confirming the Master's report, and for completing the purchase; and it also prayed that the commissioners of sewers might be directed to pay all the costs incurred, or to be incurred, in respect thereof.

Kindersley and Piggott for the petitioners, stated that the commissioners of sewers having, under the compulsory powers in their act, obtained a conveyance of a house in Lombard Street, which was settled on the petitioners, the amount of the purchase money was ordered to be paid into Court, and invested as soon as opportunity offered, in real estate of a like nature, and settled upon the same trusts as those upon which the property taken was held. The parties beneficially entitled had contracted for the purchase of a property which was considered an advantageous investment for part of the fund in Court, and were now desirous of completing, but the commissioners objected to pay the costs, contending that all the parties interested in the property were now competent to act, and that it was therefore unnecessary to bring the matter before the Court. That, however, was not the case, for according to the terms of the will under which the petitioners derived title, it was uncertain whether an estate tail was created, and whether the rule in *Shelley's case* would apply; and the Court would not upon such an application determine the rights of the parties.

Pemberton, contra, urged the serious expences that the commissioners had already been put to with reference to this transaction; and contended that as the parties were now competent to act, the fund should be paid out of Court, and invested in the same manner as any other trust fund would be. The amount of the purchase money paid into Court by the

commissioners was 3,200*l.*, and instead of its being re-invested in one purchase, two purchases had already been completed, at an expence to the commissioners of 520*l.* There was now remaining in Court a sum of 900*l.*, from which it was proposed to take 700*l.* for the present investment, so that there would still remain 200*l.*, which might be invested at an expence equal to that incurred on either of the former purchases. The act directed that all reasonable expences should be paid by the commissioners, and it could not be considered reasonable that the commissioners should be put to such heavy expences when the parties entitled were capable of investing the fund without the intervention of the court. At the time the purchase was made by the commissioners, some of these parties were under disability, and hence the necessity for paying the purchase money into Court; but that disability was now removed, and being competent to act for themselves, they had no right to ask for the amount in Court to be re-invested at the expence of the commissioners.

The Master of the Rolls said, that he could not on such a petition attempt to put a construction upon the will. It was certainly the duty of the commissioners to protect the funds entrusted to them as far as they could; but this was a case where property had been compulsorily taken by the commissioners for the purposes of the act. There could not be a greater violence to the property of individuals than such a compulsory taking possession of property, and although it was permitted for the benefit of the public, still it was not to be done at the costs of private individuals. The act directed such costs to be paid by the commissioners as were reasonable, and so far as discretionary power was vested in the Court over vexatious and improper conduct; and no doubt if such a case occurred the Court would deem it right to interfere; but his Lordship said he did not think the circumstances of the present case called for any such interference. It would have been better if the whole of the sum invested could have been laid out in one purchase; but parties could only invest when opportunity offered, and they ought not to be compelled to enter into agreements merely for the convenience of those who have forcibly deprived them of their property.

Ex parte The Commissioners of Sewers.—
June 12, 1841.

THE EDITOR'S LETTER BOX.

By a slip of the press, in the table of the *Circuits* of the Judges (p. 176, *ante*) *Bristol* has been placed in the line opposite the 14th, instead of the next line, the 18th Aug., in which the assize town is omitted altogether. We shall endeavour to prevent a similar mistake (the first, we believe, that has occurred) by giving the table in future in a different form. We are truly sorry that "An Old Subscriber" has been put to inconvenience.

The letter on the Law of Libel shall be considered.

The Legal Observer

MONTHLY RECORD FOR JULY, 1841.

— "Quod magis ad nos
Pertinet, et noscitur malum est, agitamus."

HORAT.

LAW OF ATTORNEY'S.

DISABILITY TO PURCHASE.—EVIDENCE.

On an appeal from the Court of Chancery in Ireland, it appeared that the appellant's interest in certain leasehold lands having been put up to auction, under writs of *fi fa.*, his attorney (being the real plaintiff in one of the writs) made the largest bidding, and was declared the purchaser, and paid the purchase money, which was not more than sufficient to satisfy the writs prior to his own, and the expenses. The client claimed the benefit of the purchase, alleging that the solicitor bid as his agent, and purchased in trust for him, which the solicitor denied, but offered to give up the purchase if he would pay him the purchase money and other demands he had on him. The client was not able then to raise the money, but after ten years, during which the solicitor dealt with the lands as his own, he (the client) filed his bill, charging that the solicitor bid for and purchased the lands as his agent, in trust for him.

On the hearing of the appeal it was decided, 1. That a decree by which the bill was dismissed upon the solicitor's undertaking to release the client from all demands; and a second decree by which the former was varied, and an issue directed to ascertain the value of the client's interest in the lands at the time of the sale, were both erroneous.

2. That an inquiry as to such value was immaterial; the material question being whether the attorney was acting on behalf of the client in bidding for and purchasing his property.

3. That the client's equity against the solicitor, if the solicitor was acting on his behalf, was not affected by the lapse of ten years, there being no acquiescence, and the solicitor being aware of his client's rights.

4. That if an attorney is not acting as attor-

ney for his client on a particular occasion, he may throw off that character, and exercise his independent rights.

5. That evidence cannot be received of admissions by a party, if they are not properly put in issue by the pleadings, so that he may have an opportunity of contradicting them.

The *Lord Chancellor* said, There were two decrees of the Court of Chancery in Ireland: one made on the original hearing, and another on a rehearing; and neither of these decrees could stand; but the final adjudication of the case was reserved, for the purpose of considering what ought to be the decree to be substituted in the place of those which it was their lordships' opinion ought to be reversed.

It appears that Mr. Austin, (the appellant) was entitled to a leasehold interest in certain lands in Ireland; he was very much indebted; there were several judgments against him, and the writs of execution were in the hands of the sheriff. It appears that he had employed Mr. Chambers as his attorney for several years. Mr. Chambers had an execution, but he was not the party who was seeking to enforce a sale; there were other execution creditors, who were seeking to enforce it. Mr. Austin was very desirous of preventing the sale from taking place, and one fact, of which there was no dispute, was, that he applied to the sheriff to postpone the sale; and Mr. Chambers certainly did co-operate with him in endeavouring to induce the sheriff to postpone it. The other creditors, however, would not consent, and there was no postponement. There was a postponement from a former day, but the sheriff being called on by the other creditors on the second occasion to perform his duty, and feeling that he had no discretion, proceeded to sell. One of the creditors bid a certain sum; that was a creditor who had a claim anterior to the claim of Mr. Chambers, but it was very much less: and it had been admitted on all hands, that the value of the property was more

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than sufficient to cover his demand. Mr. Chambers then bid a higher sum, and he was declared the purchaser of the property, and the sheriff made the assignment to him. This took place in the year 1819. Mr. Austin, it appears, immediately after this sale, called on Mr. Chambers to re-assign the property to him, insisting that he had a right to the benefit of this purchase, and that Mr. Chambers was not entitled to retain it for his own benefit. Mr. Chambers at that time seemed very willing to comply; it does not appear that he consented as a matter of right, but at the same time he had no difficulty in saying that if he were paid all he had a right to receive, he should not wish to retain the property. In the year 1820 Mrs. Austin died. She had a contingent interest by way of jointure upon his property, which, if she had survived Mr. Austin, would of course have very much diminished its value; and her death made the property of course so much more valuable to the purchaser. The result was, that nothing was done till a bill was filed in 1829, which was ten years after this question arose; and one point in the case was undoubtedly the length of time which elapsed from the time Mr. Austin's title accrued, when the sale took place, until the period when he filed his bill to call in question this purchase by Mr. Chambers.

The case came on to be heard before the Court of Chancery in Ireland, in 1832, and the first order made was one which it was clear could not stand; and so it appears to have been thought in the Court below, for the cause was reheard at a subsequent period, and then a decree was made that a value should be set upon the appellant's interest in the estate as it subsisted in 1819, after crediting against the value the monies paid by Mr. Chambers for the purchase, with the expenses and costs attending the same, and also the amount of his judgment vested in Beresford, and the sums paid by him for rent, costs, and fines in releasing the lands, such value to be ascertained by a jury, upon an issue directed for that purpose, &c. That decree also was not the way in which the rights of the parties could be disposed of. The only question that remains, is, what ought to be the decree pronounced?

Now there have been two points made for the appellant, impeaching the sale; one was, that when Mr. Austin, the owner of the property, found that there must be a sale, he desired Mr. Chambers to attend and buy it for him as his agent. The other point was, that Mr. Chambers being his attorney, and bound to do the best he could for his employer, could not support a purchase which he had made of his client's property.

I have no hesitation in saying, that if either of these propositions were made out in the affirmative, the appellant would be entitled to recover this property, making, of course, compensation, or repayment rather, to Mr. Chambers, of the monies which he has expended upon the property, it being quite clear, according to the doctrine of a Court of Equity, that an agent or solicitor, acting at the time as

solicitor for the vendor, cannot himself purchase it for his own benefit. That doctrine is so well established, that it is hardly necessary to refer to any decision or *dictum* upon it; but two cases were referred to, *Lees v. Nuttall*, 1 Russ. & M. 53; and *Ex parte Jones*, 8 Ves. 337, both which were founded upon a very long train of former decisions, and established that doctrine, so that it cannot by any possibility be now questioned. Upon these two points in the case the title of those parties seems to me to depend; but on looking very carefully through the evidence, and looking at the pleadings to which that evidence is applied, it does not appear to me that your lordships can safely proceed finally to adjudicate upon the rights of the parties.

It is quite clear that Mr. Chambers had been, before the sale, the attorney of Mr. Austin, and it is quite clear that he afterwards acted as his attorney; but he denies in his answer that upon this transaction, with reference to this sale, he acted as Mr. Austin's attorney; he says he was acting for himself; that he was a judgment creditor; that he had a right to attend the sale, and had a right to purchase, and that he was acting in the character of judgment creditor. If he was not acting with a view to the interests of his client, who had been his client before, and was his client afterwards, he had a right, undoubtedly, to throw off his character of solicitor at that particular time, and to exercise the right which belonged to him in another character. The bill alleges, that prior to the sale, Mr. Austin desired Mr. Chambers to attend, and bid and buy for him. This Mr. Chambers positively denies. One witness proves it in this way;—that after the sale, or at the time of the sale, Mr. Chambers made an arrangement with the sheriff, and afterwards stated that he had bid for Mr. Austin, and that Mr. Austin was the purchaser, and that he had bid for him, and was his agent in the purchase. Now, the bill charges, that the defendant had admitted that he had purchased for his client, Mr. Austin, but it does not charge that he had said so to the witness named. If the bill had charged that he had said so to the witness, the defendant would have had an opportunity of cross-examining him, or of examining other persons who were present at the time, if any person could be found who would dispute the statement. But as this bill only sets out as a general allegation, that he often said so, without referring to any one instance in particular, the defendant, of course, had no possible means of meeting the case made upon the evidence. I have had frequent occasion in this house, and elsewhere, to state that where I find evidence of an admission, and that admission is not put directly in issue by the pleadings, so that the party against whom it was intended to be used, had no opportunity of meeting it by other evidence, it would be a most unjust thing to bind the interests of the party by an admission so proved; and it would be a way of giving facility for producing false evidence, and be very dangerous and injurious to the general interests of suitors. As to the

time which has elapsed, I do not conceive that to be a bar. It would require a much longer time to give a title to a party under the circumstances alleged; whether truly alleged or not is a matter which must be further investigated; but the time which has elapsed is not in itself sufficient to bar the title, provided the title be correct. Provided Mr. Chambers wishes for it, I would recommend two issues to be tried; first, whether at the time of the purchase by Mr. Chambers, he was acting as the attorney or agent for Mr. Austin with respect to the matter of the sale; and, secondly, whether Mr. Chambers did bid for and become the purchaser of the premises as the agent for and on behalf of Mr. Austin; and that the judge should be at liberty to indorse any special matter upon the *postea*. On the other hand, if Mr. Chambers does not wish to avail himself of that opportunity, the order that I should suggest is, that the plaintiff be declared entitled to the benefit of the purchase made by Mr. Chambers, and then that it be referred to the Court of Chancery in Ireland to frame such a decree as may be proper to be framed upon that declaration.

Mr. Chambers having elected to take the issues, the order made by the house was, that the cause be remitted to the Court of Chancery in Ireland, with instructions to give the necessary directions for the trial of them, and for the examination of any particular person, or reading any particular depositions, &c. on the trial.

Austin v. Chambers, 6 Clark & Finnelly, 1.

REMARKABLE WILLS.

No. IV.

HENRY VII. 1509.

This will commences thus:—

“IN THE NAME of the almighty and merciful *Trinitie*, the Father, the Son, and the Holie Gost, thre p'sones and oon God. We Henry, by the grace of God king of England and of Fraunce, and Lord of Ireland, of this name the seventh, at oure manour of Richemount the laste daie of the moneth of Marche, the yere of our Lord God a thousand five hundredth and nyne, of oure reigne the xxivth, being entier of mynde and hool of hodie, the laude and praise to oure Lord God: mak this oure last wille and testament in the maner fourme hereafter ensuyng.

Furst, for the recommendacion of our soule into thee moost mercifull handes of hym that redemed and made it, we saie at this tyme, as sithens the furst yeres of discrecion we have been accustomed, thies wordes. DOMINE JH'U XPIE, qui me ex nichilo creasti, fecisti, redemisti et predestinasti ad hoc quod sum, tu scis quid de me facere vis, fac de me secundum voluntatem tuam cum misericordia. Therefor doo of me thi wille with grace, pitie and mercye, moost humbly and entierly I beseche the; and thus unto the I bequethe, and into thi moost mercifull hands my soule I committe.

And howebelt I am a synfull creature, in synne conceived, and in synne have lived, knowing perfetly that of my merits I cannot attayne to the lif everlasting, but oonly by the merits of thy blessed passion, and of thi infinite mercy and grace. NATHELESSE my moost mercifull redeimer, maker and saviour, I truste by the special grace and mercy of thi moost blisshed moder evir virgyne, oure lady Sainte Mary; in whom after the in this mortall lif, hath ever been my moost singulier trust and confidence, to whom in al my necessities I have made my continuel refuge, and by whom I have hiderto in all myne adversities, ever had my spial comforte and relief, wol nowe in my moost extreme nede, of her infinite pitie take my soule into her hands, and it present unto her moost dere son: whereof swetest lady of mercy, veray moder and virgin, well of pitie, and surest refuge of all nedefull; moost humbly, moost entierly, and moost hertely I beseche the. And for my comforte in this behalue, I trust also to the singular mediacion and praiers of al the holie companie of Heven: that is to saye, aungels, archaungels, patriarches, prophets, apostels, evangelists, martirs, confesours, and virgyns, and spially to myne accustomed avoures I call and crie, Sainte Michael, Saint John Baptist, Saint Johon Evangelist, Saint George, Saint Anthony, Saint Edward, Saint Vincent, Saint Anne, Saint Marie Magdalene, and Saint Barbara; humbly beseching net oonly at the houre of dethe, soo to aide, succour and defende me, that the auncient and gostely enemye, ner noon other euill or dampnable esprite, have no powar to invade me, ner with his terribleness to annoye me; but also with your holie praiers, to be intercessours and mediators vnto our maker and redeimer, for the remission of my synnes and salvacion of my soule.

And for asmoche as we have receved our solempne coronacion, and holie inunction, within our monastery of Westminster, and that within the same monasterie is the common sepulture of the kings of this reame; and spially because that with in the same, and among the same kings, retest the holie bodie and reliquies of the glorious king and confessor Saint Edward, and diverse other of our noble progenitours and blood, and specially the body of our graunt dame of right noble memorie Quene Kateryne, wif to King Henry the Vth, and daughter to King Charles of Fraunce; and that we by the grace of God, p'opose the bodie and reliquies of our vncl of blisshed memorie King Henry the VIth. For thies, and diverse other causes and consideredcions vs spially moevyng in that behalf, wa wol that whensoever it shall please our salviour Jh'u Crist to calle vs oute of this transitorie lif, be it within this our royme, or in any other reame or place without the same, that our bodis bee buried within the same monastery; that is to saie in the chapell where our said graune dame laye buried, the which chapell we have begonne to buyde of newe, in the honour of our blessed lady.”

The will then provides for the king's tomb, the funeral &c., and then proceeds as follows :

"Also we wol, that furthwith and ymmediatly after our decease, whensoever it shall please God soo to dispose of us, be it with in this our reame, or in any other reame or contrary with out the same ; our executours with al diligence and spede that goodly may be doon, cause to be said within our said monastery, our cite of London, and other places next adjoining to the same, for the remission of our synnes, and the weale of our soule, ⁱⁱ masses; whereof we wol ^c be said in the honour of the Trinitie, ^{mm} in the honour of the v wounds of our Lord Jhu Crist, ^{mm} in the honour of the v joles of our lady, ^{cccc} in the honour of the rx orders of aungells, ^{cc} in the honour of the patriarches, ^v in the honour of the xii apostells, and ^{mmccc}, which maketh up the hool nombre of the said ^x masses, in the honour of all saints. And that the said masses and every of them, bee said and doon as above, at the ferrest within oon moneth next and ymmediatly ensuyng the knowlege of our said decease: and that every preist saieng any of the said masses, have for every of them soo by hym said. ^{vi}, the which inthe hool amounteth to the somme of ^{ccl}."

Aims are then directed to be given, and the following are the directions relating to the king's debts, and restitution and satisfaction for wrongs.

"Also we wol, that all our debts first and before al other charges, our funeralis, and costs of our enterement and sepulture onoly excepted, with all possible spede and diligence after thei appere doe, justly and truly bee contented and paid, by the hands of oure executours, wherewith we charge them as thei wol answer for us before God, and discharge our conscience. And also if any p'sone of what degree soever he bee, shewe by way of complainte to our executours, any wrong to have been doon to hym, by us, our commaundement, creation or means, or that we helde any goodes or lands which of right ought to apperteigne unto hym; we wol that every such complainte be spedely, tenderly and effectually herde, and the matier duly and indifferently examyned, by the moost Reverende Fader in God th'archbishop of Cantterbury that now is, or that hereafter for the tyme shall be, the Revere'de Faders in God Richard Bishop of Wynchester, the Bishops of London and Rochester, that now be, or hereafter for the tyme shall be; Thomas Erle of Surrey, our tresourer general, George Erle of Shrewesbury steward of our house, Sur Charles Somerset, Lord Herberd

oure Chambrelaine, the Chief Justices of our Benchie and Common Place that now be, or that the tyme of our decease shal be; Mister John Yong, Maister of the Rolles of our Chauncery, Sir Thomas Lovell, Knight, Tresourer of our house, Maistre Thomas Rothall, our Secretary, Sir Richard Emson Knight, our Chaunceller of our Duchie of Lancastre, Edmund Dudley Squier our Attourney, that at the tyme of oure decease be our confessour, the Provincial of the Freres Observants, and Maistre William at Water Deane of our Chapelle, or any vi of them at the leest, and iii of our executours. And in case by suche examinacion it can be founde, that the complaint be made of a grounded cause in conscience, other than mater doon by the course and ordre of our lawes, or that our said executours by their wisdoms and discrecions, shall thinke that in conscience our soule ought to stande charged with the said matier and complaint; we wol then that as the caas shall require, he and thei bee restored and recompensed by our said executours, of such our redy money and jewels as then shall remaine, and for lack therof, of suche revenues as we shall hereafter appointe, aswel for that cause, as for the contentacion of our said debts, yf any suche shal fortune to be; and to th'entent that no suche p'sone, ne any other whereunto we shall after our decease stande indebted, have cause of ignorance of this our wille and mynde, we wol that our executours within iii monethes next and ymmediatly following our decease, at the ferrest, cause open proclamacions to bee made in every shiretoun, and iii or iiii other of the best burghs and market townes, of every shire within this our reame; that if any man can for any cause reasonable, clayme any debt of us, or shewe that we have wronged him in any manner of wise, that might or shalld charge our conscience as before is said, that he resort to our said executours, and the said examiners, in such place as after their discretion shall be appointed, and then and there to be redely herde and answered, as reason and conscience shall in that parte require. And howbeit that th'officers of our house and wardrobe for the tyme being, have continually had for the bering of the charges of the same, so large and sure assignements, that we trust there is litle or nothing owing in that behalf; yet forasmuche as we wold gladly every of our subjects shuld be truly and justly contented of al that we owe unto them, we wol that if any p'sone prove before our executours, that any dutie is owing unto hym, for the charges of our said household and wardrobe; then our said executours take suche provision for his contentacion, that he be paid by the hands of thoes officers of our house and wardrobe, in whose tyme the said dutie grewe or should have been paid; or ellis for default therof, to be paid unto them by their owen hands, of our said goods and revenues."

Directions are next given for founding hospitals, repairing highways, finishing churches,

and other gifts for pious services; with a bequest on the marriage of the king's daughter.

The will thus concludes:—

"The residue of our chatellis, goods and debts, not geven, nor bequethed nor disposed, to be employed nor bestowed by this our laste wille and testament whatsoever thei be, or in whos handes or custodie they remaigne, and to us or to any other persone or persones to our use apperteynyng, due or belonging; we wol, that our said executors dispose, emploie and bestowe, to and upon suche uses, works and dedes of morite, almose, pitie and charitie, and suche as may serve for the better execution of this our laste wille and testament, as to theyn after their discrecions shall be thought moost plaiaunt and acceptable to God, moost expedient for the redemption and remission of our synnes, and moost helosome and meritorious for our soule, where with estraictely charge theim, their saules and consciences, as thei wol for the same accompte and answer before God, at his high daie of judgement.

(Signed) HENRY VII.

In testimonye of all which premisses, and of every of theim, and also in witnesse that thies presents be our laste wille and testament, we have comaunded and caused, and by warrant of thies presents signed with our seigne manuell, wol and comaunde, aswell our privy seale, as our signet, remaining in the keeping of our secretary, and our privy signet of the Egrevill remaynyng in our owen keeping, as also our grete seale to be put to thies said presentes. Dated at Caunterbury the xth day of Aprill, the xxiii yere of our reigne."

LAW ASSOCIATION

FOR THE BENEFIT OF THE WIDOWS AND FAMILIES OF PROFESSIONAL MEN.

The following report of the Board of Directors was made to the Annual General Court, on the 13th May, 1841. W. S. JONES, Esq., in the Chair.

"In laying before the members a statement of the proceedings of the association for the past year, the directors are gratified that they are able to report the advancing prosperity of the Society, and a consequent increase in its power of doing good.

"Although in these annual statements the transactions of the association occupy but a brief space, and may appear to a superficial observer to possess a character of sameness, yet to those who have the administration of the affairs of the association, and who are called upon personally to investigate the claims on its bounty, each succeeding month is productive of a fresh scene of interest, and presents renewed occasions for exertion.

"The relief afforded to the families of de-

ceased members has during the year amounted to 735*l*, being 139*l*. less than the amount devoted to that class of claimants during the preceding year. This difference has been occasioned by the circumstance that there were in the year 1839-40 three applications for relief, which, during the present year, it has happily not been found necessary to renew; and it is satisfactory to the directors to have it in their power to state, that no fresh case of that description has been presented to them.

"On the occasion of the last annual meeting the sum of 100*l*. was placed at the discretion of the directors, to be applied by them in the relief of the families of those professional men who might have died without having entitled their relations to relief from the association by subscribing to its funds. Of this sum 95*l*. have been so applied; and although the amount thus appropriated may appear small in comparison with the income of the association, yet it is to be remembered that the funds are considered as primarily applicable to the relief of the widows and families of those who have been members, and, occasionally, distressed members in their lifetime; and it will be seen by the tabular statement of relief, at the foot of this report, that since the formation of the association, the total sum expended in relief to non-members' families amounts to 2,150*l*., affording assistance, in almost every instance, to very distressing objects.

"The directors are anxious to record several instances of liberality on the part of members of the profession in donations contributed to the funds of the association; and they cannot but express a hope that succeeding accounts may exhibit similar instances of generosity.

"An addition of twenty-five members has been made to the list of subscribers during the year.

"Immediately after, and in pursuance of the instructions of, the last annual meeting, the directors added 100*l*. to the capital stock of the association, and they are enabled now to recommend a further investment of 300*l*. stock, out of the donations and life subscriptions, which, by the 59th law, are directed to be funded; still leaving, however, a small balance in hand on that account. By means of this investment, the funds of the association will be increased to 18,400*l*. three per cents.

"But while, from rather more than an average increase in the number of life members as compared with the annual subscribers, the directors are able to suggest this addition to the accumulated fund, they cannot but urge upon their professional brethren to remember the wide sphere of usefulness contemplated by the association, and the probability of an addition to the claims upon its bounty; and, in conclusion, the directors again call upon the members to exert their influence in adding to the yet very small number of the practising solicitors of the metropolis whose names are enrolled as members.

"(By order of the board,)

J. JOHN MURRAY, Secretary."

It may be useful to add a statement of the nature and objects of the association. It was instituted in 1817, and consists of attorneys and solicitors residing and practising in the metropolis, or within the bills of mortality: its objects are—

“To grant relief to the widow and children of any deceased member dying in distressed circumstances, and in the event of his death without leaving a widow or child, then to other relatives dependant on him for support.

“To allow to a widow or family a sum of money, in lieu of an annual payment, with a view to an establishment in business or employment.

“To take measures for promoting the interests of any deserving widow and family, by patronage and recommendation.

“To advance a sum of money for educating, apprenticing, or otherwise assisting any of the family of a member dying in distressed circumstances.

“To allow assistance to any member who may be involved in pecuniary difficulties, in consequence of inability to conduct his business from bodily or mental infirmity, or other involuntary calamity.

“To that branch of the profession this institution is now earnestly recommended as a plan well calculated to alleviate the misfortunes of domestic life, in cases where, by the premature death or the incapacity of a professional man, he or his family might become destitute of the means of support.

“It has often been matter of surprise, that while all other professions had long since united in benevolent contributions for guarding against such calamities, no institution of the kind among the members of the law had hitherto existed, although many afflicting instances have occurred sufficient to manifest its expediency.

“If, however, the delay in forming such an establishment be a cause of regret, it is a source of great satisfaction to perceive, that as soon as the plan was adopted, it experienced an encouragement almost unexampled, and highly gratifying to every benevolent mind.

“Within less than five years the Society was enabled to realize the whole of the capital of 10,000*l.* stock, required, by the 50th regulation, for the commencement of its benevolent operations.

“This successful progress of the association will, it is hoped, be an incitement to other professional men, whether practising or retired, to become contributors to this useful and benevolent fund; and by these means to enable the institution to hold out a more liberal assistance to those who may unhappily become applicants for its bounty.

“Honoured with high legal patronage, and zealously supported by a large proportion of the most eminent of that branch of the profession by which it has been established, the association, so unobjectionable in principle, and so truly laudable in its design, may be considered fixed on a solid and lasting basis.”

**LOCAL AND PERSONAL ACTS,
DECLARED PUBLIC, AND TO BE JUDICIALLY
NOTICED.
4 & 5 Vict.**

1. An act to amend the acts relating to the London and South-western railway company.

2. An act to enable the Preston and Long-rige railway company to raise a further sum of money.

3. An act to alter and amend the powers and provisions of an act passed in the seventh year of the reign of King William the Fourth, intituled “An act for better paving, cleansing, lighting, watching, and improving the town of Whithy, in the North Riding of the county of York; and to allow a drawback in certain cases from the duties thereby granted.

4. An act for regulating legal proceedings by or against the York and London assurance company.

5. An act to enable “The Glasgow, Paisley, and Greenock railway company” to raise a further sum of money; and to amend and enlarge the powers and provisions of the acts relating to the said railway.

6. An act to enable the Durham and Sunderland railway company to raise a further sum of money; and for amending the acts for making the said railway.

7. An act to enable the York and North Midland railway company to raise a further sum of money; to make a certain approach to the said railway; and to amend the acts relating thereto.

8. An act to enable the company of proprietors of the Manchester and Salford waterworks to raise a further sum of money; and to amend the acts relating thereto.

9. An act for regulating legal proceedings by or against the Britannia life assurance company.

10. An act to amend the acts relating to the Chard canal.

11. An act for enabling the Wishaw and Coltness railway company to raise a further sum of money.

12. An act for granting further powers to the London and Blackwall railway company.

13. An act for granting further powers to the North Midland railway company.

14. An act to amend and enlarge some of the provisions of the acts relating to the Eastern counties railway, and to authorize the company to raise a further sum of money for the purposes of the said undertaking.

15. An act for better lighting with gas the borough of Derby and several parishes and places adjacent thereto.

16. An act for improving certain parts of the townships of Bilton-with-Harrowgate and Pannal, called High and Low Harrowgate, in the West Riding of the county of York; for protecting the mineral springs and regulating the stinted pasture in the said townships.

17. An act for the administration of the poor laws in the parish of Saint Luke Chelsea

in the county of Middlesex, and relating to the highways in the said parish.

18. An act for the more effectual preservation and improvement of the fisheries in the river Annan in the county of Dumfries, and in the streams and waters running into the same, and on the shores or sea coast adjacent to the mouth or entrance of the said river.

19. An act for more effectually repairing and improving certain roads passing through or near the town of Ilminster in the county of Somerset.

20. An act for maintaining certain roads in the county of Cambridge, to be called "the Stumpcross roads."

21. An act for repairing several roads leading from the town of Barnstaple in the county of Devon, and for making several new lines of road connected therewith.

22. An act for more effectually repairing the road from the western side of the New Forest near Christchurch to the boundary of the parish of Lyndhurst, all in the county of Hants.

23. An act for making a turnpike road from Wimborne Minster in the county of Dorset to Piddletown in the same county, with certain branches therefrom.

24. An act to enable the Northern and Eastern railway company to make certain deviations in the line of their railway, and to alter and amend the several acts relating to the said railway.

25. An act for enabling the Manchester and Leeds railway company to raise a further sum of money.

26. An act to enable the West Durham railway company to raise a further sum of money; and to amend the act relating to the said railway.

27. An act to light with gas and supply with water the townships of Old and New Accrington and Church, in the county palatine of Lancaster.

27. An act to alter, amend, and enlarge the powers and provisions of an act for lighting with gas the port and town of Liverpool and township of Toxteth Park in the county of Lancaster; and for lighting with gas the several townships of West Derby, Everton, Kirkdale, Walton-on-the-Hill, Bootle-cum-Linacre, Litherland, Great Crosby, Wavertree, and Garston, in the county of Lancaster.

29. An act for enlarging the powers of the acts for building a bridge over the river Avon, from Clifton to the opposite side of the river in the county of Somerset.

30. An act for enabling the trustees of the Liverpool docks to erect transit sheds on the West Quay of the Prince's Dock, to make a wet dock with warehouses on the quays, and to construct other works, and to raise a further sum of money; and for enlarging the powers of the acts relating to the docks and harbour of Liverpool; and for other purposes relating thereto.

31. An act to repeal certain of the provisions of an act passed in the first year of the reign of his Majesty King George the Fourth, for

improving parts of the line of road between the borough of Plymouth and the city of Exeter, through Ashburton and Chudleigh, in the county of Devon.

32. An act for repairing the road leading from Brent Bridge in the county of Devon to Gasking Street in or near the borough of Plymouth in the said county.

33. An act for more effectually repairing the road from Cranford Bridge to Maidenhead Bridge, with roads thereout to Eton Town End and to the Great Western railway, and from Langley Broom to Datchet Bridge, all in the counties of Middlesex and Bucks.

34. An act for repairing the roads from Coventry to Warwick, and from Coventry to Martyn's Gutter in the county of the city of Coventry and in the county of Warwick, and other roads communicating therewith, in the said county of Warwick.

35. An act for more effectually repairing and improving the road from Market Harborough in the county of Leicester to Brampton in the county of Huntingdon.

36. An act for suppressing juvenile delinquency in the city of Glasgow.

37. An act for completing and maintaining a new church in Birkenhead in the county of Chester.

38. An act for amending and enlarging the provisions of the several acts relating to the Great North of England railway company; and for other purposes relating thereto.

39. An act to amend the acts relating to the London and South-western railway company; and to authorize an agreement between the said company and certain inhabitants of Wandsworth and Battersea respecting an alleged loss in their supply of water.

40. An act for extending, enlarging and amending some of the provisions of the act relating to the Great Leinster and Munster railway.

41. An act for extending and enlarging some of the provisions of the acts relating to the Bristol and Exeter railway.

42. An act to enable the Northern and Eastern railway company to make a branch line of railway; and to alter and amend the several acts relating to the said railway.

43. An act for making a railway to be called the Wilsontown, Morningside, and Coltness railway, in the counties of Lanark and Linlithgow.

44. An act to alter, amend, and enlarge the powers granted to the Newcastle-upon-Tyne and Carlisle railway company; and to authorize alterations in the line of the railway.

45. An act for improving and regulating the markets within the city and borough of Wells, in the county of Somerset.

46. An act to alter, amend, and enlarge the powers and provisions of an act passed in the first year of the reign of her present Majesty, intituled "An act for regulating the market in the town of Exmouth in the county of Devon."

[To be continued.]

PARLIAMENTARY RETURNS.

ENGLAND AND WALES.—OFFENCES.—1840.

Murder	54	31	18
Attempts to murder, attended with dangerous bodily injuries	5	-	5
Attempts to murder, unattended with bodily injuries	25	12	6
Shooting at, stabbing, wounding, &c. with intent to maim, do bodily harm, &c.	178	44	108
Manslaughter	177	66	99
Attempts to procure the miscarriage of women	4	2	1
Concealing the births of infants	53	7	41
Sodomy	24	8	16
Sodomy, assaults with intent to commit, and other unnatural misdemeanors	39	13	16
Rape and carnally abusing girls under the age of ten years	56	17	18
Assaults with intent to ravish and carnally abuse	106	20	74
Carnally abusing girls between the age of ten and twelve years	4	-	4
Abduction	3	-	3
Bigamy	63	1	59
Child stealing	1	-	1
Assaults	604	106	463
Assaults on peace officers in the execution of their duty	485	31	376

Total of No. 1

Sacrilege	16	4	11
Burglary	504	77	398
Burglary, attended with violence to persons	13	-	13
Housebreaking	693	97	560
Breaking within the curtilage of dwelling-houses and stealing	72	4	63
Breaking into shops, warehouses, and counting-houses, and stealing	222	9	187
Misdemeanors, with intent to commit the above offences	12	3	10
Robbery	124	17	71
Robbery and assaults to rob, by persons armed, in company, &c.	216	11	149
Robbery, attended with cutting or wounding	8	3	6
Obtaining property by threats to accuse of unnatural crimes	1	-	1
Assaults, with intent to rob, and demanding property with menaces	39	4	23
Stealing in dwelling-houses, persons therein being put in fear	5	2	3
Sending menacing letters to extort money	1	-	1
Piracy	9	1	8

Total of No. 2

As abstract of the aggregate number of persons committed for Criminal Offences in England, during, in columns, under the several offences or heads of crime, as correctly as the same can be made out, the number committed for trial, the number against whom bills were not found, the number acquitted, and the number convicted.

No. 1. Offences against the Person.

No. 2. Offences against property committed with violence.

TOTAL NUMBER OF PERSONS.			
Committed for trial.	No Bills found and no previous convictions.	Not Guilty	Convicted
1,881	170	411	1,300
16	1	4	11
504	29	77	398
13	-	-	13
693	36	97	560
72	4	15	63
222	9	26	187
12	-	3	10
124	17	36	71
216	11	56	149
8	-	3	6
1	-	-	1
39	4	12	23
5	2	-	3
1	-	-	1
9	-	1	8
1,934	113	457	1,444

No. 3. Offences against property committed without violence.	(Cattle stealing	47	2	8	37
	Horse stealing	212	10	32	170
	Sheep stealing	375	28	90	257
	Larceny, to the value of 5 <i>l.</i> , in dwelling-houses	168	8	20	140
	Larceny from the person	1,570	195	328	1,047
	Larceny by servants	1,482	77	217	1,188
	Larceny, simple	15,536	1,350	2,506	11,680
	Stealing from vessels in port, on a river, &c.	100	6	20	74
	Stealing goods in process of manufacture	9	-	1	8
	Stealing fixtures, trees and shrubs growing, &c.	254	3	42	209
	Misdemeanors, with intent to steal	16	1	7	8
	Embezzlement	300	15	62	223
	Stealing and receiving letters stolen from the Post Office, by servants	19	1	3	15
	Receiving stolen goods	860	83	380	397
	Frauds, and attempts to defraud	536	41	96	399
	Total of No. 3	21,484	1,820	3,812	15,852
No. 4. Malicious offences against property.	(Setting fire to a dwelling-house or shop, persons being therein	1	-	1	-
	Setting fire to a house, warehouse, church, &c.	45	13	21	11
	Setting fire to crops, plantations, heath, &c.	22	8	7	7
	Attempts to commit arson, set fire to crops, &c.	4	3	-	1
	Riot, and feloniously demolishing buildings, machinery, &c.	-	-	-	-
	Destroying silk, woollen, linen, or cotton goods in process of manufacture	3	-	-	3
	Destroying hop-binds, trees and shrubs growing, &c.	8	1	1	6
	Killing and maiming cattle	34	6	12	16
	Sending letters threatening to burn houses, &c.	2	-	2	-
	Other malicious offences	26	3	-	23
	Total of No. 4	145	34	44	67
No. 5. Forgery and offences against the Currency.	(Forging and uttering forged Bank of England Notes	20	5	5	10
	Forging and uttering other forged instruments	140	6	29	105
	Having in possession, &c. forged Bank of England Notes	4	-	1	3
	Counterfeiting the current gold and silver coin	16	-	-	16
	Having in possession, &c. implements for coining	16	-	6	10
	Buying and putting off counterfeit gold and silver coin	2	-	-	2
	Uttering and having in possession - ditto	343	20	39	284
	Total of No. 5	541	31	80	430

REVISING BARRISTERS.

Return to an address of the Honourable the House of Commons, dated 20th May, 1841.

—*for*,
A return of the names of the barristers who were appointed for the first time, last year by the judges, to revise the list of voters in England, and of the standing at the bar of each such barrister at the date of his appointment.

Ordered by the House of Commons to be printed, 22d June, 1841.

Home Circuit.

Henry Sugden, Esq., of three years and three months' standing.

Robert Emilius Wilson, Esq., of five years, one month and eighteen days' standing.

(Signed) *Abinger.*

Midland Circuit.

—Nil.—

(Signed) *N. C. Tyndal.*

Oxford Circuit.

Thomas J. Phillips, Esq., called to the bar Michaelmas Term, 1835.

Charles Alexander Wood, Esq., called to the bar Trinity Term, 1835.

(Signed) *J. Park.*

Norfolk Circuit.

Peter Frederick O'Malley, Esq., called to the bar on the 2d May, 1834.

William Bence Jones, Esq., called to the bar on the 9th June, 1837.

Thomas Sanders, Esq., called to the bar on the 25th January, 1839.

(Signed) *E. H. Alderman.*

Northern Circuit.

Joseph St. John Yates, Esq., called to the bar 1st May, 1835.

Francis Hastings Doyle, Esq., called to the bar 17th November, 1837.

William Frederick Pollock, Esq., called to the bar 26th January, 1838.

John Paget, Esq., called to the bar 2d November, 1838.

(Signed) *Thos. Colman.*

Western Circuit.

John Holdsworth, Esq., called in Hilary Term, 1834.

C. O. Dayman, Esq., called in Michaelmas Term, 1829.

Henry A. Merewether, Esq., called in Trinity Term, 1837.

(Signed) *John T Coleridge.*

North Wales Circuit.

—Nil.—

(Signed) *Denman.*

South Wales Circuit.

George Clive, Esq., of ten years' standing at the bar at the date of his appointment, August, 1840.

(Signed) *T. Erskine.*

ENGLAND AND WALES.—OFFENCES.—1840.

Committed for trial.	No Bills found and no prosecution.	Not Guilty	Convicted
14	1	5	8
—	—	—	—
—	—	—	—
4	—	2	2
91	4	22	65
11	—	5	6
5	—	—	5
30	5	18	7
30	4	18	8
212	13	29	170
418	87	103	228
22	8	2	12
229	14	13	202
6	1	5	—
2	—	2	—
128	16	31	81
1,202	153	255	794
27,187	2,321	4,399	19,927

Total of No. 6
Grand Total

High Treason
Assembling armed, &c. to aid smugglers
Assaulting and obstructing officers employed to prevent smuggling
Deer stealing, and feloniously resisting Deer keepers
Being out armed, &c. to take game by night, taking game by night, and assaulting game-keepers
Taking and destroying fish in enclosed water
Being at large under sentence of transportation
Prison breaking, harbouring and aiding the escape of felons
Perjury and subordination of perjury
Riot, sedition, &c.
Riot, breach of the peace, and pound breach
Rescue, and refusing to aid peace officers
Keeping disorderly houses
Indecently exposing the person
Felonies not included in the above denomination
Misdemeanors, ditto

No. 6. Other offences, not included in the above classes.

ANNUAL GENERAL MEETING OF THE INCORPORATED LAW SOCIETY.

At the Annual General Meeting of the Members of the Society, held in the hall, Tuesday, July 6, 1841; Mr. Metcalfe in the Chair; the following report of the Committee of Management was read by the Secretary.

"The Committee of Management have to report to the Society such matters as have come under their consideration since the last annual general meeting.

"In furtherance of the resolutions passed at a meeting held in the hall of this Society on the 8th day of May of the last year, a petition, under the corporate seal, was presented to the House of Lords by the Earl of Devon, in support of the measure for *removing the courts of Law and Equity from Palace Yard* to the vicinity of the Inns of Court; and a similar petition to the House of Commons was presented by the present Attorney-General, who on application to him expressed his willingness to give the subject his best consideration.

"The Attorney-General accordingly in April last submitted the proposed measure to the House of Commons, and a select committee was appointed 'to consider the expediency of erecting a building in the neighbourhood of the Inns of Court, for the sittings of the courts of Law and Equity, in lieu of the present courts adjoining to Westminster Hall, with a view to the more speedy, convenient, and effectual administration of justice.'

"The Select Committee of the House held several meetings during the late session, which were attended by the committee of this Society, when all the Equity Judges, two of the chiefs of the Common Law Courts, several counsel, both in equity and common law, solicitors residing in different parts of the metropolis, the masters, registrar, and other officers of the different Courts, Mr. Barry, the architect, and Mr. Cadogan, a surveyor, were examined.

"The session ended before the whole of the evidence could be obtained, so as to enable the Select Committee to make their report; but the evidence, so far as it has been taken, fully justifies the interference of this Society, by establishing strong grounds for the removal of the Courts.

"The committee have continued to give their consideration to such *bills relating to the Law*, as were brought into Parliament, and have adopted such measures as appeared to them desirable either to prevent their passing into a law, or for the amendment of objectionable clauses.

"The committee subsequently to the last annual meeting presented another memorial to the judges of the Court of Chancery on the subject of *gratuities to the Clerks of Counsel in*

Equity, and they have the satisfaction to report that the Lord Chancellor and the other Judges in Equity were pleased to establish the same regulation as in the Common Law Courts.

"The scale so established will be found to apply to costs as well between solicitor and client as between party and party; and the committee earnestly hope that the members of the profession will consider an uniform adherence to the scale as a duty to their clients and to each other.

"This regulation and the other rules and orders made by the Superior Courts have been printed, and forwarded to the members in the accustomed manner.

"The committee regret that they are not enabled to make any report on the subject of *Retainers to Counsel*. It may seem that the subject is not attended with difficulty; but, on consideration, it will be found to be complicated, and the precise state of the practice, as recognized by the bar, not properly defined. The committee have therefore endeavoured to ascertain what that state of practice is generally understood to be.

"They now request that members will be so good as to communicate to the committee the particulars of any case from which inconvenience may have occurred to them individually with regard to retainers, together with such observations as may assist the committee in their endeavours to arrive at the settlement of some general rules on the subject.

"The committee have, as in former years, carefully considered the several cases presented to them of the alleged *Malpractice* of attorneys; of the conduct of persons applying to be admitted, or to be re-admitted; and of unqualified persons acting as attorneys, as well as of the practice of certificated conveyancers and notaries, who were charged with exceeding the limits of their privileges.

"In the performance of this duty the admission of one individual has been suspended by the court, the re-admission of another refused, and in the other cases, as the remedy belonged to the department of stamps and taxes, the parties complaining were referred to the Government Solicitor.

"Some questions relating to the *Usage of the Profession* in practice have been submitted to the committee, and carefully considered by them. The result of their deliberations has been communicated to the respective parties, and will be found entered in the book kept in the secretary's office for that purpose.

"The committee have the gratification of stating, that several *new Provincial Law Societies* have been formed, and others are projected; from those so formed the committee have received many communications, referring to the uniformity of practice, and otherwise relating to the interests of the profession. The committee have paid every attention to

such communications; and are of opinion that the formation of such associations will further the objects sought by this society of promoting the respectability of the profession in general.

"In reference to the *Funds and Property of the Society*, the committee have to state, in addition to the information contained in the auditor's report, to the end of the year 1840, that they have entered into an agreement with the occupier of the adjoining house for the possession, at Lady Day, 1843, of that and the other premises, the freeholds of which were purchased in the year 1838. The society will then derive an improved rent, and will also be enabled at any time afterwards to enlarge the present building in such manner, and to such extent, as may be deemed advisable.

"In consequence of a suggestion made at the last annual meeting, the committee have given due consideration to the practicability of reducing the annual subscription of the London Members of the Society. It is their duty now to state, that the expenses incurred in the last year for various repairs of the building, and the further repairs and painting, which were prevented by the necessary occupation of the buildings for the purposes of the society, and which are intended to be done in the long vacation of the present year, do not now allow any reduction of such annual subscription.

"The *Examination* of the candidates has proceeded as heretofore, and the sums received have been contributed to the funds of the society by the examiners.

"The committee regret that during the last twelve months the society has been deprived by death of two very valuable members of the committee of management, namely, Mr. Sweet and Mr. Brundrett.

"In the will of the latter is contained the following bequest: 'To the treasurer for the time being of the Law Institution in Chancery Lane, the sum of 200*l.*, clear of legacy duty, in furtherance of the objects of that Institution.'

"The committee have considered the *Bye Laws*, with respect to the number of shares required for the qualification of members of the committee of management. Finding that the number of members holding ten shares and upwards, exclusive of the present committee, are now only twenty-six, they have deemed it expedient to recommend that so much of the bye laws Nos. 31 and 32, as provides that no member of the society shall be capable of being a member of the committee of management, unless he be a holder of ten shares at least in his own right in the capital or joint stock of the society, be altered, by substituting the words '*five shares*' for '*ten shares*.'

"Since the last meeting, the sum of 185*l.* has been expended in the purchase of

books, and the committee have to notice several valuable contributions to the *Library*, from authors and others, which will be found recorded in the donation book. The library now consists of upwards of 6000 volumes.

"The collection of works in the main branches of *Law*, and *County History*, and *Topography*, being now considerable, the committee have printed a catalogue of those parts of the library, and which they trust will be found useful. A small number of copies only have been printed, it being intended, at an early period, to print another catalogue, comprising the entire library; a copy of which will be sent to every member.

"*Lectures in Common Law*, *Conveyancing*, *Equity*, *Bankruptcy*, and *Criminal Law*, have been delivered from the month of October to March inclusive; and as they manifestly tend to the great advantage of the profession, it is proposed to continue them for the same periods in the ensuing season.

"The committee have deemed it advisable to make a regulation that the *Arbitration Rooms* of the Society shall not be let to any person who is not a member of the society, unless special authority be given by the chairman or deputy chairman, or two members of the committee of management.

"Since the last general meeting, sixty-nine members have been approved, and the total number now amounts to 1205.

"In conclusion, the committee of management congratulate the members on the continued prosperity of this Society, and the progress it has made towards effecting the various important objects contemplated on its establishment."

The following resolutions were passed at the meeting:—

"Resolved, That Thomas Adlington, Samuel Amory, Michael Clayton, James William Freshfield, Edward Rowland Pickering, and Charles Ranken be, and they are hereby deemed and declared to be, elected members of the committee of management, in lieu of those who now go out of office by rotation.

"Resolved, That William Bowker, Richard Cowlishaw Sale, and Thomas Wing be, and they are hereby deemed and declared to be, elected auditors of the accounts of the society, in lieu of those who now go out of office.

"Resolved, That the report of the committee of management be received and entered on the minutes. That such parts of the report as the committee of management think fit be printed.

"Resolved, That the auditors' report be approved, and signed by the chairman.

"Resolved, That so much of the bye laws, Nos. 31 and 32, as provides that no member of the society shall be capable of being a member of the committee of management, unless he be a holder of *ten* shares at least, in his own

right, in the capital or joint stock of the society be altered, by substituting the words “five shares” for “ten shares.”

“Resolved, That the thanks of the meeting be given to the committee of management for their continued attention to the interests of the society, and their exertions in behalf of the profession.

(Signed) THOMAS METCALVE,
Chairman.

MISCELLANEA.

CURRAN'S ELOQUENCE.

Statute construction.—Now, my lords, in examining this question, you must proceed by the ordinary rule of construction, applicable alike to every statute; that of expounding it by the usual acceptance and natural context of the words in which it is conceived. *Speeches*, 4th edition, 17.

Thus far, my lords, have I examined this law, with respect to the present question, by the general rule of construction, applicable generally to all statutes, that is, of seeking for the meaning of the legislature in the ordinary and natural context of the words they have thought proper to adopt. Page 24.

May I presume to ask what does the *prima facie* construction of a statute import? It must import, if it import anything, that meaning which, for aught then appearing, is true, but may possibly, because of something not then appearing, turn out not to be so. Page 53.

..... A *prima facie* construction of a statute, therefore, can be nothing but the opinion that rises in the mind of a man upon a single reading of it, who does not choose to be at the trouble of reading it again. Page 53.

Law.—What is the force and perfection of law? It is the permanency of the law; it is that whenever the fact is the same the law is also the same; it is that the law remains a written, monumented, and recorded letter, to pronounce the same decision upon the same facts whenever they shall arise. 4th edition, 152.

Phrases.—I have tried too long and observed too much not to know, that every word in a phrase is one of the feet upon which it runs, and how the shortening or lengthening of one of those feet will alter the progress or direction of its motion. Page 215.

Indolence.—It is the common fate of the indolent to see their rights become a prey to the active. The condition upon which God hath given liberty to man is eternal vigilance; which condition if he break, servitude is at once the consequence of his crime, and the punishment of his guilt. p. 4.

Man.—Rely upon it, physical man is every where the same; it is only the various operation of moral causes that gives variety to the

social or individual character and condition. p. 165

I know that those philosophers have been abused, who think that men are born in a state of war. When I see the conduct of man to man, I believe it. p. 355.

MASTERS EXTRAORDINARY IN CHANCERY.

From 22nd June, to 23rd July, 1841, both inclusive, with dates when gazetted.

Berenburgh, John, Bloomfield Street, London-Wall, London, Tobaccoist. July 20.

Carpenter, Edward Samuel, Truro. July 16.

Gillam, Robert, jun., Birmingham. June 22.

Pope, David, Cleobury Mortimer, Salop. July 16.

Roflitt, John, Kingston-upon-Hull. June 22.]

Sidebotham, Henry, Haughton, Lancaster, and of Manchester, Cotton Manufacturer. July 20.

Slaney, Thomas, Birmingham. July 16.

DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

From 22nd June to 23rd July, 1841, both inclusive, with dates when gazetted.

Corser, John, John S. Rutter, and Charles Corser, Wolverhampton, Stafford, Attorneys and Solicitors. June 25.

Nicholls, James, senior, and James Nicholls, jun., Cook's Court, Serles Street, Lincoln's Inn, Attorneys and Solicitors. July 16.

Strutt, John, and John Galsworthy, Ely Place, Holborn, Attorneys and Solicitors. July 2.

Wansey, George, and Charles Fortescue Tagart, Ely Place, Attorneys and Solicitors. July 16.

BANKRUPTCIES SUPERSEDED.

From 22nd June, to 23rd July, 1841, both inclusive, with dates when gazetted.

Day, Thomas Starling, Eaton, Norwich, and of the City of Norwich, Merchant. June 25.

Higman, William Henry, Bristol, Saddler, July 2.

Penny, John, Southampton, Builder. July 16.

Ryle, John, Manchester and of Macclesfield, Banker. July 23.

Seed, William Grimshaw, Manchester, Gingham and Calico Manufacturer, and Commission Agent. June 25.

Tidmarsh, James, Cheltenham, Gloucester; Mercer and Draper. June 29.

BANKRUPTS.

From 22nd June, to 23rd July, 1841, both inclusive, with dates when gazetted.

Aldred, George, Southampton Row, Bloomsbury, Bookseller and Stationer. Cannon, Off. Ass.; Bridger, Finsbury Circus. June 25.

- Atkinson, John, Greenbank near Kendal, Westmorland, Bobbin Manufacturer. *Wilson & Co.*, Kendal; *Allen & Co.*, Queen Street, Cheapside. July 16.
- Bowley, Richard, Commercial Sale Rooms, Mincing Lane, London, and of Doddington Grove, Newington, Surrey, Broker. *Belcher*, Off. Ass.; *Drew*, Bermondsey Street. June 22.
- Blanch, James, Bath, Ironmonger. *Wansey & Co.* Ely Place; *Hassell*, Bristol. June 22.
- Bellemois, Marin Hyppolite, Pomroy Street, Old Kent Road, Surrey, Manufacturing Chemist and Trader. *Green*, Off. Ass.; *Willoughby & Co.*, Clifford's Inn. June 25.
- Bennett, William Cooper, otherwise William Bennett the elder, Whitechapel Road, Omnibus Proprietor and Livery Stable Keeper. *Whitmore*, Off. Ass.; *Winter & Co.*, Bedford Row. June 29.
- Butt, William Charles, Somerton, Somerset, Merchant. *Fenning & Co.*, Tokenhouse Yard, London; *Chitty*, Shaftesbury. June 29.
- Bragg, Henry, Fenning's Wharf, Southwark, Surrey, and of Grovehill Terrace, Grove Lane, Camberwell, Surrey, Cheese Factor. *Graham*, Off. Ass.; *Vandercom & Co.*, Bush Lane. July 2.
- Bryant, Lewis, Stamford Hill, Middlesex, Coal Merchant. *Edwards*, Off. Ass.; *Brown & Co.*, Commercial Sale Rooms, Mincing Lane. July 2.
- Brown, Joseph, Minorities, Upholsterer. *Edwards*, Off. Ass.; *Abrahams*, Clifford's Inn. July 2.
- Batson, William, and Henry Joseph Bissell, Lea Brook New Iron Works, Tipton, Stafford, Ironmasters. *Combe*, Staple Inn; *Fellowes*, jun., Dudley, Worcester. July 2.
- Brownrigg, Henry, Liverpool, Coal Merchant and Commission Agent. *Smith*, Liverpool; *Smithson & Co.*, Southampton Buildings, Chancery Lane. July 2.
- Bates, John, Worship Street, Finsbury Square, Coachmaker. *Johnson*, Off. Ass.; *Goren*, South Molton Street. July 6.
- Baggott, James, Worcester, Victualler. *Rea*, Worcester; *Hall*, New Boswell Court, Lincoln's Inn. July 6.
- Boult, Edward Swanwick, and Thomas Addison, Liverpool, Stock and Share Brokers. *Forshaw & Co.*, Liverpool; *Deane*, Chancery Lane. July 6.
- Balshaw, Charles, Altrincham, Chester, Bookseller and Stationer. *Milne & Co.*, Temple; *Nicholls & Co.*, Altrincham. July 6.
- Balfe, Michael William, Conduit Street, Hanover Square, Music Seller. *Whitmore*, Off. Ass.; *Risley & Co.*, Quality Court, Chancery Lane. July 9.
- Bridson, Arthur, Dublin, Ireland, Provision Merchant. *Graham*, Off. Ass.; *Hill & Co.*, Saint Mary Axe, London. July 9.
- Blanthorn, John, Shrewsbury, Salop, Mercer and Hosier. *Clarke & Co.*, Lincoln's Inn Fields; *Coope*, Shrewsbury. July 9.
- Barlow, John Henry, Change Alley, Cornhill, London, Stock Broker. *Pennell*, Off. Ass.; *Taylor & Co.*, Great James Street, Bedford Row. July 20.
- Bass, Joseph, Brecon, Brecknock, Draper. *Watkins*, Brecon; *Fisher*, Great James Street, Bedford Row. July 20.
- Butterworth, William, Sunderland Wharf, High Street, and of Rye Terrace, Peckham, Surrey, Corn Merchant. *Cassan*, Off. Ass.; *Rhodes & Co.*, Chancery Lane. July 23.
- Baldry, George, jun., late of Bury St. Edmonds, and then of Ipswich, Suffolk, Innkeeper. *Wayman & Co.*, Bury St. Edmonds; *Pemberton*, Symonds' Inn, Chancery Lane. July 23.
- Butterworth, Joshua, London Leather Warehouses, Bermondsey, and of Walcot Place, Lambeth, Surrey, Leather Factor. *Cassan*, Off. Ass.; *Rhodes & Co.*, Chancery Lane. July 23.
- Caporn, John Goode, Bedford, Linen Draper. *Clowes & Co.*, Temple; *Eagles*, Bedford. June 22.
- Culyer, Richard Burford, Clifton Street, Finsbury, Middlesex, Currier. *Alsager*, Off. Ass.; *Ashley*, Shoreditch. June 29.
- Cogan, Thomas Boulton, Bristol, Tanner. *Wansey & Co.*, Ely Place; *Hassell*, Bristol. July 9.
- Colls, Charles, Charles Thompson, and Richard Peckover Harris, Lombard Street, London, Bill Brokers. *Cassan*, Off. Ass.; *Kearney & Co.*, Bucklersbury. July 13.
- Catlin, Richard, Leicester, Grazier and Horse Dealer. *Payne & Co.*, Nottingham; *Gresham*, Castle Street, Holborn. July 20.
- Copplestone, Jacob, Plymouth and Exeter, Devon, Grocer. *White & Co.*, Lincoln's Inn Fields; *Jacobson & Co.*, Plymouth. July 20.
- Calverley, John, of the Abbey near Knarsborough, York, Corn Miller, and Tanner. *Fidley*, Paper Buildings, Temple; *Richardson*, Harrogate. June 25.
- Callinson, Thomas, Wakefield, York, Boat Builder. *Adlington & Co.*, Bedford Row; *Wilby*, Wakefield. June 29.
- Crickmay, Charles, Portsmouth, Gun and Pistol Manufacturer. *Hodgson*, Birmingham; *Devereux*, Portsmouth; *Vincent & Co.*, Temple; *Watson & Co.*, Bouverie Street, Fleet Street. July 2.
- Crane, Rebecca, Harrow on the Hill, Middlesex, Draper. *Gibson*, Off. Ass.; *Hood*, King's Arms Yard, Coleman Street. July 6.
- Clare, Wilson, Preston, Lancaster, Watch Maker and Jeweller. *Mayhew & Co.*, Carey Street, Lincoln's Inn; *Blackhurst & Co.*, Preston. July 6.
- Cocking, William Beeston, Sandy, Bedford, Market Gardener. *Smith & Co.*, Biggleswade; *Rhodes & Co.*, Chancery Lane. July 20.
- Cunliffe, Henry, Green Haworth, Oswaldtwistle, Lancaster, Shopkeeper. *Wiglesworth & Co.*, Gray's Inn; *Robinson & Co.*, Blackburn. July 23.
- Coleman, Benjamin, Liverpool, Stock and Share Broker and Commission Agent. *Cross*, Liverpool; *Vincent & Co.*, Temple. July 23.
- Dawes, Benton, Ashby-de-la-Zouch, Leicester, Grocer and Tallow Chandler. *Fisher & Co.*, or *Dewes*, Ashby-de-la-Zouch; *Parker & Co.*, Raymond Buildings, Gray's Inn. June 25.
- Douglas, William, and John More Douglas, Liver-

- pool, Merchants. *Addington & Co.*, Bedford Row; *Crump & Co.*, Liverpool. July 6.
- Dantry, John Smith, and John Ryle, Manchester, Bankers. *Makinson & Co.*, Temple; *Athinson & Co.*, Manchester. July 9.
- Daintry, John Smith, and John Ryle, Manchester, Bankers. *Makinson & Co.*, Temple; *Athinson & Co.*, Manchester. July 13.
- Downman, Hugh Herbert, Kidwelly, Carmarthen, Tin Plate Manufacturer. *Jones & Co.*, Carmarthen; *Clarke & Co.*, Lincoln's Inn Fields. July 13.
- Daly, Charles, Red Lion Square, Bookseller and Publisher. *Belcher*, Off. Ass.; *Lawrance & Co.*, Bucklersbury. July 20.
- Dix, Joseph, Broad Street, Lambeth Walk, Lambeth, Surrey, Victualler. *Whitmore*, Off. Ass.; *Dimmock*, Size Lane. July 20.
- Evans, Iltid, Bridgend, Glamorgan, Ironmonger. *Lake & Co.*, Basinghall Street; *Hargreaves*, Neath. June 29.
- Fellman, Isaac, Fore Street, Limehouse, Middlesex, Brewer. *Cannan*, Off. Ass.; *Marson & Co.*, Church Row, Newington Butts. June 29.
- Ford, Henry, Aylesbury, Bucks, Grocer. *Turquand*, Off. Ass.; *Catlin*, Ely Place. July 20.
- Fox, John, Minorities, London, Tailor and Draper. *Turquand*, Off. Ass.; *Biggenden*, Walbrook. July 23.
- Green, John, and William Green, Wetherby, York, Timber Merchants. *Johnson & Co.*, Temple; *Leeman*, York. July 23.
- Harris, Henry, Faversham, Kent, Grocer. *Catlin*, Ely Place. June 29.
- Hamnett, Samuel, Liverpool, Victualler. *Brabner & Co.*, Liverpool; *Vincent & Co.*, Temple. July 2.
- Hill, Thomas, Taunton, Somerset, Draper and Mercer. *Clarke & Co.*, Lincoln's Inn Fields; *Hancock*, Taunton. July 6.
- Hopkins, Samuel, Croydon, Surrey, Grocer. *Belcher*, Off. Ass.; *Wilde & Co.*, College Hill, London. July 20.
- Jones, Maria Louisa, Tredegar, Bedwelty, Monmouth, Victualler. *Simpson & Co.*, Farnival's Inn; *Morgan & Co.*, Abergavenny. June 25.
- Jackson, Joseph, Romsey extra Southampton, Slate and Coal Merchant. *Daman & Co.*, Romsey; *Buckley & Co.*, Gray's Inn Square. July 9.
- Jones, John, and John Boon, Burslem, Stafford, Ironmongers. *King*, Camden Cottages, Camden Town; *Cooper*, Tunstall. July 9.
- Jordan, Thomas, Wolverhampton, Stafford, Broker. *Philpot & Co.*, Southampton Street, Bloomsbury; *Phillips & Co.*, Wolverhampton. July 16.
- Kymer, Maximilian Richard, Winsford, Chester, and of Bucklersbury, London, Salt Manufacturer and Merchant. *Whitmore*, Off. Ass.; *Taylor*, Clement's Lane, Lombard Street. June 29.
- Knight, George, Gloucester, Linen Draper; *Nicholls & Co.*, Cook's Court, Lincoln's Inn; *Lovengrove*, Gloucester. June 29.
- Kirk, William, Leicester, Builder. *Holme & Co.*, New Inn; *Gregory*, Leicester. July 9.
- Lowe, Charles, Liverpool, Builder. *Taylor & Co.*, Bedford Row; *Harvey & Co.*, Liverpool. June 29.
- Lawton, Charles, Liverpool, Shoe Maker. *Norris*, Liverpool; *Norris & Co.*, Bartlett's Buildings, Holborn. July 2.
- Lewis, Lewis Alpha, Fleet Street, London, Bookseller. *Lackington*, Off. Ass.; *Nicholson*, South Square, Gray's Inn. July 6.
- Lane, John Noxon, Birmingham, Chemist and Druggist, Varnish and Cement Manufacturer. *Whitehead*, Aldermanbury; *Benson*, Birmingham. July 9.
- Lingham, Thomas, Cross Lane, St. Mary-at-Hill, London, Wine Merchant. *Graham*, Off. Ass.; *James*, Basinghall Street. July 23.
- Molyneux, Henry, Lombard Street, London, and of Ealing Green, Middlesex, Watch and Chronometer Maker. *Groom*, Off. Ass.; *M'Duff*, Castle Street, Holborn. June 22.
- Morgan, Hugh William, Alford, Lincoln, Grocer and Linen Draper. *Willis & Co.*, Tokenhouse Yard; *Mason*, Lincoln. June 22.
- Mead, William, Thorney near Langport, Somerset, and Jacob Stower, Greenville Place, Clifton, Gloucester, lately carrying on business at Thorney aforesaid as Merchants. *Stone & Co.*, Dorchester; *Stone*, Chancery Lane. June 25.
- Marshall, William, and Henry Rodgers, Liverpool, Ironfounders. *Mallaby*, Liverpool; *Chester*, Staple Inn. July 2.
- Marter, John Charles, Drury Lane, Linen Draper. *Turquand*, Off. Ass.; *Kearsey & Co.*, Bucklersbury. July 6.
- Milne, John, High Crompton within Crompton, Lancaster, Dealer. *Milne & Co.*, Temple; *Whitehead & Co.*, Oldham. July 6.
- Mobbs, George, Newland, Northampton, Plumber, Glazier, and Painter. *Gresham*, Castle Street, Holborn. July 9.
- Miller, William, St. Martin's Lane, Charing Cross, Wine Merchant, and of Great Scotland Yard, Middlesex, Distiller; and of Battersea, Surrey, Sugar Manufacturer. *Pennell*, Off. Ass.; *Dobinson*, Gray's Inn Square. July 13.
- Merentié, Marius, King William Street, London, Merchant. *Belcher*, Off. Ass.; *Smith & Co.*, Basinghall Street. July 16.
- Millership, Thomas, Moseley New Colliery, near Wolverhampton, Stafford, Coal and Iron Master and Retail Brewer. *Church*, Bedford Row; *James*, Birmingham. July 16.
- Morris, John, Earl's Court, Leicester Square, Cowkeeper, Milkman and Dealer in Fire Wood and Eggs. *Graham*, Off. Ass.; *Smith*, Barnard's Inn. July 23.
- Newton, Alexander Levi, Bury Street, Saint Mary Axe, London, Merchant. *Pennell*, Off. Ass.; *Jacobs*, Crosby Square, Bishopsgate. June 29.
- Noble, George, Biddick, Durham, Ship Builder. *Hodgson*, Broad Street Buildings; *Wilson*, Sunderland. June 29.
- Newman, John, Lewes, Sussex, Saddler. *Burkitt*, Carriers' Hall, London Wall. July 20.
- Newton, William, and John Newton, Macclesfield, Chester, Silk Throwsters; *Pennell*, Off. Ass.; *Crowder & Co.*, Mansion House Place, July 23.

- Overton, James, Queen Street, Grosvenor Square, Coach and Harness Plater. *Lackington*, Off. Ass.; *Gosn*, Edward Street, Portman Square. June 22.
- Procter, Thomas Benjamin, Stockwell, Surrey, and late of Hammersmith, Middlesex, Lunatic Asylum Keeper. *Graham*, Off. Ass.; *Kirkman*, King William Street. June 22.
- Parker, John, Manchester, Cotton Spinner and Cotton Manufacturer. *Smith*, Chancery Lane; *Shuttleworth & Co.*, Rochdale. June 25.
- Palfreyman, Luke, Sheffield, York, Scrivener. *Tattershall*, Great James Street, Bedford Row; *Smith*, or *Hoole & Co.*, Sheffield. June 29.
- Petley, James, Tewkesbury, Gloucester, Draper. *Sproul*, Tewkesbury; *Jenkins & Co.*, New Inn. July 9.
- Prentis, Henry Wood, Rayleigh, Essex, Grocer. *Cannan*, Off. Ass.; *Amory & Co.*, Throgmorton Street. July 16.
- Prattman, William Luke, Butterknowle Lodge, Durham, and Michael Forster Copley, Durham, Timber Merchants. *Stevenson*, Darlington; *Burn*, Great Carter Lane, Doctors' Commons. July 16.
- Rawlings, John, Gloucester, Innkeeper and Victualler. *White & Co.*, Bedford Row; *Washbourn*, Gloucester. June 22.
- Robbins, James, Winchester, Bookseller. *Harvey & Co.*, Lincoln's Inn Fields; *Wheeler*, Manchester. July 2.
- Ryle, John, Manchester, Lancaster, and of Macclesfield, Chester, Banker. *Makinson & Co.*, Temple; *Atkinson & Co.*, Manchester. July 9.
- Root, Richard, Warrington, Oxford, Draper. *Manton & Co.*, Banbury. July 13.
- Ravenscroft, William Richard, Manchester, Banker. *Makinson & Co.*, Temple; *Atkinson & Co.*, Manchester. July 20.
- Sharp, Daniel, Southampton, Attorney at Law, and Merchant. *Daman & Co.*, Romsey; *Allen & Co.*, Clifford's Inn. June 22.
- Selkirk, William, Aston-Juxta-Birmingham, Engraver. *Awory & Co.*, Throgmorton Street; *Bray*, Birmingham. June 22.
- Shury, John, and John James Shury, Charter House Street, Middlesex, Engravers, Printers and Stationers. *Whitmore*, Off. Ass.; *Lloyd*, Cheapside. June 25.
- Sidebottoms, Henry, and Thomas Lewis, Haughton, Lancaster and of Manchester, Cotton Manufacturers. *Keightley & Co.*, Chancery Lane; *Humphrys & Co.*, Bury. June 25.
- Snowdon, Thomas, North Shields, Northumberland, Grocer and Tallow Chandler. *Munns*, Fenchurch Buildings; *Medcalf*, North Shields; *Salmon*, South Shields. June 29.
- Stallebrass, Thomas, and Henry Middleton, City Road, Finsbury Square, and of Tabernacle Walk, Saint Lukes, Timber and Mahogany Merchants. *Pennell*, Off. Ass.; *Gordon & Co.*, Threadneedle Street. July 9.
- Stammer, John, Charles Street, Grosvenor Square, Brush Dealer. *Turgand*, Off. Ass.; *Weymouth & Co.*, Chancery Lane. July 16.
- Stratton, Charles, Nine Elms, Surrey, and of Commercial Road, Lambeth, Surrey, Timber
- Merchant. *Turgand*, Off. Ass.; *Newson & Co.*, Wardrobe Place, Doctors' Commons. July 23.
- Thomas, James William, New Corn Exchange, Mark Lane, London; and of Strood, Kent, Corn Merchant and Corn Factor. *Groom*, Off. Ass.; *McLeod & Co.*, Billiter Street, London. July 6.
- Taylor, James, Manchester, Brush Maker. *Nell*, Bond Court, Walbrook; *Warrington & Co.*, Manchester. July 6.
- Taylor, James, Brightelmstone, Sussex, Bookseller and Stationer. *Freeman & Co.*, Coleman Street. July 9.
- Travis, John, Greenacre's Moor, Oldham, Lancaster, Grocer and Tallow Chandler. *Richards & Co.*, Lincoln's Inn Fields; *Higginbottom & Co.*, Ashton-under-Lyne. July 29.
- Wrigglesworth, John, Leeds, York, Cheese and Bacon Factor and Sand Merchant. *Hox*, Leeds; *Dupning & Co.*, Leeds; *Bell & Co.*, Bow Church Yard. June 25.
- Whitmore, Edward, John Wells, John Wells, jun., and Frederick Whitmore, Lombard Street, London, Bankers. *Belcher*, Off. Ass.; *Barendale & Co.*, Great Winchester Street. July 2.
- Windeatt, William Browne, South Brent, Devon, Corn Factor and Commission Agent. *Surr*, Lombard Street; *Lockyer & Co.*, Plymouth. July 9.
- Winter, William Bragge, Bristol, Builder and Dealer in Timber. *Wansey*, Lodbury; *Hutchings*, Bristol; *Hassell*, Bristol. July 16.
- Wilson, George, and Richard Briddon, Salford, Manchester, Machine Makers. *Makinson & Co.*, Temple; *Atkinson & Co.*, Manchester. July 16.
- Williams, John, Ledbury, Hereford, Innkeeper and Victualler. *Jones*, Ledbury; *King & Son*, Serjeant's Inn, Fleet Street. July 16.
- Walley, William, Salford, Lancaster, Flour Dealer. *Bower & Co.*, Chancery Lane; *Barratt*, jun., Manchester. July 20.
- Williams, John, Bangor, Carnarvon, Shipwright. *Aldington & Co.*, Bedford Row; *Griffith*, Penisardre Llanwrst, Denbigh. July 29.
- Westhead, Richard Waterloo, Crosby, Lancaster, Victualler. *Holme & Co.*, New Inn; *Yates*, jun., Liverpool. July 29.

PRICES OF STOCKS,

Tuesday, July 27, 1841.

Bank Stock div. 7 per Cent.	- - - - -	171
3 per Cent. Reduced	- - - - -	90½ a 90
3 per Cent. Consols Annuities	- - - - -	89½ a 90
3½ per Cent. Annuities 1818	- - - - -	99½
3½ per Cent. Reduced Annuities	- - - - -	99½ a 90
New 3½ per Cent. Annuities	- - - - -	98½ a 90
Annuities for thirty years, expire 10th October, 1859	- - - - -	12½
Ditto	5th Jan. 1860	- - - - -
India Stock div. 10½ per Cent.	- - - - -	218 a 9
Ditto Bonds 3½ per Cent.	- - - - -	9s. pm.
South Sea Stock, div. 3½ per Cent. 99	- - - - -	
3 per Cent. Cons. for account 25th Aug.	- - - - -	90½ a 90 a 90½
Exchequer Bills 1000 <i>l.</i> a 2½ <i>l.</i>	19s. a 17s. a 19s. pm.	
Ditto 500 <i>l.</i> do.	19s. a 17s. a 19s. pm.	
Ditto Small do.	19s. a 17s. a 19s. pm.	

The Legal Observer.

SATURDAY, AUGUST 7, 1841.

— "Quod magis ad nos
Pertinet, et noscere malum est, agitamus.

HORAT.

NOTES ON RECENT STATUTES.

4 Vict. c. 14.

By stat. 21 Hen. 8, c. 13, clergymen were not in general allowed to take any lands or tenements to farm, upon pain of 10*l.* per month, and total avoidance of the lease; nor upon like pain to keep any tan-house or brewhouse; nor should engage in any manner of trade, nor sell any merchandize, under forfeiture of the treble value; which prohibition is consonant to the canon law. However, by the statute 57 G. 3, c. 99, spiritual persons beneficed or performing spiritual duties, might take to farm eighty acres of land, but no more, without the written consent of the bishop of the diocese; but, by the same act, the same persons were forbidden to carry on any trade or dealing for profit, upon pain of forfeiting the value of the goods by them bought to sell again, and their contracts in any such trade or dealing were declared to be utterly void. And it has very recently been determined (*Hall v. Franklin*, 3 M. & W. 252) that a joint stock banking company is within the meaning of this last statute, and that a contract made with a banking company, of which any spiritual persons were partners or members, was void. This decision having excited much alarm among persons interested in these and other similar companies, it has been enacted by the 1 & 2 Vict. c. 10, s. 1, that no association or co-partnership then formed, or which might be formed before the end of the next session of parliament, (that is the session 1839) nor

any contract entered into by any of them shall be illegal or void, or occasion any forfeiture by reason of any spiritual person being or having been a member, manager, or director. And by a subsequent statute of the same session, 1 & 2 Vict. c. 106, after repealing the 57 G. 3, c. 77, it is enacted (s. 28), that spiritual persons are not to take a farm for occupation above eighty acres, without the consent of the bishop, and then not beyond seven years, under a penalty of 40*s.* an acre; and by s. 29 that no spiritual person shall engage in trade, or buy or sell, or deal for profit, unless in any case in which such trading or dealing shall have been or shall be carried on by or on behalf of any number of partners exceeding six, or in any case in which any trade or dealing shall have devolved, or shall devolve upon any spiritual person, or upon any other person for him, or to his use, under or by virtue of any devise or bequest, &c.: but in none of the foregoing excepted cases shall it be lawful for such spiritual person to act as a director or managing partner, or to carry on such trade or dealing as aforesaid, in person. But by s. 30 this is not to extend to spiritual persons engaged in keeping a school, or as tutors, or in respect of any thing done, or any buying or selling in such employment, or to selling any thing *bona fide* bought for the use of the family, or to disposing of books by means of a bookseller, or to being a manager or director in any benefit society, or life or fire insurance society. Spiritual persons illegally trading may be suspended, and for the third offence deprived (s. 31). By an act of last session,

4 Vict. c. 14, after reciting that divers associations and co-partnerships consisting of more than six members or shareholders have from time to time been formed, for the purpose of being engaged in and carrying on the business of banking, and divers other trades and dealings, for gain and profit, and have, accordingly, for some time past, been and are now engaged in carrying on the same, by means of boards of directors, or managers, committees, or other officers acting on behalf of all the members or shareholders of, or persons otherwise interested in, such associations or co-partnerships: And reciting that divers spiritual persons having or holding dignities, prebends, canonries, benefices, stipendiary curacies, or lectureships, have been members or shareholders of, or otherwise interested in, divers of such associations and co-partnerships: And reciting that it is expedient to render legal and valid all contracts entered into by such associations or co-partnerships, although the same may now be void by reason of such spiritual persons being or having been such members or shareholders, or otherwise interested as aforesaid: It is enacted that no such association or copartnership already formed, or which may be hereafter formed, nor any contract, either as between the members, partners, or shareholders composing such association or co-partnership, for the purposes thereof, or as between such association or co-partnership and other persons, heretofore entered into, or which shall be entered into, by any such association or co-partnership already formed or hereafter to be formed, shall be deemed or taken to be illegal or void, or to occasion any forfeiture whatsoever, by reason only of any such spiritual person as aforesaid being or having been a member, partner, or shareholder of, or otherwise interested in the same; but all such associations and co-partnerships shall have the same validity, and all such contracts shall and may be enforced in the same manner, to all intents and purposes, as if no such spiritual person had been or was a member, partner, or shareholder of, or interested in such association or co-partnership: Provided always, that it shall not be lawful for any spiritual person holding any cathedral preferment, benefice, curacy, or lectureship, or who shall be licensed or allowed to perform the duties of any ecclesiastical office, to act as a director or managing partner, or to carry on trade or such dealing as aforesaid in person. And by s. 2, it is enacted that in all actions and suits which shall have been brought or instituted

by or on behalf of any such association or co-partnership which may have been formed since the end of the session of Parliament held in the second and third years of the reign of her present Majesty, in case any defendant therein shall, before the 29th day of March, 1838, by plea or otherwise, have insisted on the invalidity of any contract thereby sought to be enforced by reason of any such spiritual person as aforesaid being or having been a member or shareholder in such association or co-partnership, such defendant shall be entitled to the full costs of such plea or other defence, to be paid by the plaintiff, and to be taxed as the Court in which the said action or suit shall be depending, or any judge thereof shall direct, and in order fully to indemnify such defendant, it shall be lawful for such court or judge to order the plaintiff to pay to him such further costs (if any) of the said action or suit, as the justice of the case may require.

4 VICT. c. 22.

By stat. 1 Edw. 6, c. 12, s. 13, it was enacted that lords of parliament and peers of the realm having place and voice in parliament might have the benefit of their peerage equivalent to that of clergy for the first offence (although they could not read, and without being burnt in the hand) for all offences then clergyable to commoners, and also for the crimes of house-breaking, highway robbery, horse stealing, and robbing of churches. And this statute was held to extend to peeresses. *Duchess of Kingston's case*, 11 St. Tr. 264. All the statutes relating to benefit of clergy were repealed, or rendered inoperative by stat. 7 & 8 Geo. 4, c. 28. But in the recent case of the Earl of Cardigan, who was tried before the House of Peers in the present year for murder, and acquitted, a doubt arose whether this statute extended to the privilege of peerage. An act has accordingly been passed to relieve as well the peerage as the general administration of the law from the scandal of any such doubt, and it is enacted by stat. 4 Vict. c. 22, that so much of the 1 Edw. c. 12, as is therein recited (being the portion we have given above) shall be repealed and utterly void, and be no longer of any effect, and that peers convicted of felony, shall be liable to the same punishment as any others of her Majesty's subjects.

4 & 5 VICT. c. 28.

To prevent trifling and malicious actions for words, for assault and battery, and for trespass, it is enacted by stat. 3 & 4 Vict.

c. 24, by which the statutes 43 Eliz. c. 6, and 22 & 23 Car. 2, c. 9, s. 136, are repealed, but re-enacted and extended, that if the plaintiff in any action of trespass, or of trespass on the case brought, or to be brought in any of her Majesty's Courts at Westminster, or in the Court of Common Pleas at Lancaster, or in the Court of Common Pleas at Durham, shall recover by the verdict of a jury less damages than 40s., such plaintiff shall not be entitled to recover or obtain from the defendant in respect of such verdict, any costs whatever, whether it shall be given upon any issue or issues tried, or judgment shall have passed by default, unless the Judge or presiding officer before whom such verdict shall be obtained, shall afterwards certify on the back of the record, or on the writ of trial or writ of inquiry, that the action was really brought to try a right besides the mere right to recover damages for the trespass or grievance for which the action shall have been brought, or that the trespass or grievance in neglect of which the action was brought was wilful and malicious. By stat. 4 & 5 Vict. c. 28, it is however enacted, that the stat. 3 & 4 Vict. c. 24, is repealed so far as the same repeals the stat. of 43 Eliz. or 22 & 23 Car. 2, in respect to actions wherein verdicts had been returned before the passing of the said act; and by s. 2 it is further enacted, that no plaintiff who had before the passing of the act 3 & 4 Vict. c. 24, obtained a verdict for a less amount of damages than 40s., shall now be entitled to full costs, unless he was so entitled immediately before the passing of the said act of last session.

4 & 5 VICT. c. 52.

By stat. 3 & 4 Vict. c. 94, the Lord Chancellor, with the advice of the Master of the Rolls and Vice Chancellor, or one of them, may make rules and orders for regulating the practice of the High Court of Chancery, and such rules and orders are to be laid before both Houses of Parliament; but no such rule or order shall have effect until each House of Parliament shall have sat thirty days after the same shall have been laid before each House of Parliament as aforesaid. By stat. 4 & 5 Vict. c. 52, the rules and orders are to be binding from the making thereof, unless objected to by the vote of either House of Parliament, or are informal. This statute will enable the Lord Chancellor to issue the rules and orders forthwith, and they will be binding, unless objected to by the vote of either House of Parliament. It is generally understood that

Lord Cottenham will avail himself of this statute, and that the new rules and orders will forthwith be issued.

PRACTICAL POINTS OF GENERAL INTEREST.

PROCHEIN AMI.

By the stat. of Westm. 2, c. 15, it is enacted that in every case where such as be within age may sue, it is ordered that if such within age be eloiigned, so that they cannot sue personally, their next friends shall be admitted to sue for them; and in the Abridgment of Cases in Equity, vol 1, p. 72, it is said that any one may bring a bill as *prochein ami* to an infant without his consent, because it is at his peril that he brings it to be answerable for the event. The wife of a minor, having committed adultery, the minor's father procured himself to be appointed *prochein amy*, and commenced an action for criminal conversation, without the knowledge or authority of his son, and it was held on the above authorities, that he was entitled to do so, and that a judgment in that action would be a good bar to any proceedings for the same cause by the son when of age. "If it was necessary," said Mr. B. Parke, "in order to protect the defendant that an authority should have been given by the infant to commence proceedings, I agree that there is no proof of such authority prior to the action, and if the case turned upon the justification of the father's act by the infant, there is no evidence that the latter knew of it. However, it seems to me that no authority is required to enable a *prochein amy* to sue, and I cannot distinguish this case from any other action brought by a *prochein amy*. It is true that we have not the petition for the appointment of a *prochein amy* before us; nor do we know the particular circumstances under which he was appointed: but in the absence of any proof to the contrary, we must assume that the proceedings were in the ordinary and regular mode; if indeed there had been any fraud or misrepresentation, that should have been brought before the court by affidavit. It is clear by reference to the authorities adverted to, that a *prochein amy* is an officer of the court, appointed by the court; and there is no doubt that the judgment in this action would be a bar to any proceedings by the son when of mature age. *Ex parte Higginbotham*, 9 Dowl. 200.

NOTICES OF NEW BOOKS.

Outlines of Law: or Readings from Blackstone and other Text Writers; including the Alterations down to the end of the last Session of Parliament. Second Edition. Part I: Common and Statute Law. By Robert Maugham, Secretary to the Incorporated Law Society. 1841.

THIS is a new edition of Mr. Maugham's *Outlines of Law*, revised to the end of the last session of Parliament. It is designed (he says) in this Series to republish such parts of the Commentaries of Mr. Justice Blackstone as remain unaltered, incorporating concisely all the important new enactments and decisions, and completing from other Text Writers' and Reports an elementary Course of Reading for the Student.

It appears, therefore, that this plan differs from all the editions of Blackstone hitherto published. In those, the entire work is preserved, and the alterations either incorporated in the text, or appended in notes. Here, the obsolete and repealed parts of the law are omitted, or concisely noticed; the new and altered parts are embodied in the work, and the whole is enlarged and illustrated from other sources down to the present time. Although some of the historical and antiquarian parts of the Commentaries have been preserved, they are so abridged as to make room for the introduction of several chapters which are not to be found in any of the editions of Blackstone. The object of the compiler has been to avail himself of the labours and the unrivalled style of the learned Commentator, but to adopt in some respects a different arrangement, and to bring in aid more recent authors, without departing from the general design and scope of the celebrated work, which still holds its rank as well with the general reader as the legal student.

In looking over these pocket volumes, it may be regretted that many passages will be found wanting which have hitherto interested the black-letter reader; but we are consoled by recollecting that there is no library of even the smallest pretensions, which does not include some edition of the Commentaries, and we rejoice that there is no lack of learned editors to preserve the original text in all its elegance and purity. The present compiler aims at the humble but useful task of furnishing, as he terms it, an outline of the law in its various depart-

ments, suited for those who are entering the profession.

The following is extracted from the preface to the work.

"Since the publication of the first edition of this work, in the year 1837, several alterations have been effected in the law. The editor has therefore revised the present volume, and incorporated such alterations therein as properly fall within his design. His object has been to offer a general summary of the law—an outline sufficiently full to afford a comprehensive view of the subject, without entering either into minute particulars or cases of rare occurrence. He has endeavoured to bring the matter into such limits, and arrange it in such order and method, as may enable the student within a reasonable time to make himself master of a considerable extent of legal knowledge, on many of the subjects with which he ought to be intimately acquainted. With this purpose in view he has selected for consideration the various injuries cognizable in the Superior Courts, affecting the persons and the property of individuals. These involve the important duty of the legal adviser, to determine rightly in what court, and in what form and manner, the remedy should be sought. The redress thus afforded for each injury, and the specific nature of each remedy, ought of course to be well known to every practitioner.

In considering these injuries, and the appropriate remedies afforded in the Courts of Common Law, it appeared impossible to follow a better model than Mr. Justice Blackstone. His masterly summary of the law relating to Private Wrongs, contained in the third volume of the Commentaries, stands altogether unrivalled; but the abolition of all actions concerning real property, except ejectment, dower, and *quære impedit*, has rendered no longer practically useful a considerable part of that volume. Yet a concise account of so much of the former law as bears upon its present state, appeared necessary to be retained.

"Whatever might have been the learned Commentator's opinion of the wisdom of that 'great legislative revolution in the old established forms' which has been effected in our times, and contrary to his expectation, he would probably at the present day have deemed it advisable to leave to the historian and antiquary much of that legal learning which he wrought out and embellished with such singular skill and excellence. This task of omission the editor has endeavoured to perform.

"It was deemed advisable to depart in some instances from the arrangement adopted in the Commentaries, for the sake of commencing with subjects which appeared more likely to occur in the ordinary course of professional business. The text has been carefully preserved, except where the law was subsequently altered; and these alterations have been embodied in the work wherever they occurred. The passages which have been omitted consist of the repealed parts of the law, and of some

of the historical statements; but others have been retained for their useful explanation of the existing law.

"It was suggested that for the convenience of the student, the volume should be divided into two parts;—the first, comprising Common and Statute Law, as applicable to the remedies afforded in the Common Law Courts; and the second, comprising Equity and Bankruptcy. This suggestion has been adopted; but the two parts will be so arranged as to form one volume. It has also been deemed useful to append a statement of the text books and reports, with explanations of the abbreviations used in referring to them, and a list of the statutes cited."

CHANGES IN THE LAW,

IN THE LAST SESSION OF PARLIAMENT.

No. XV.

TRIAL OF CONTROVERTED ELECTIONS.

4 & 5 Vict. c. 58.

(Continued from p. 263.)

14. *Notice of objections to be published in the office of the examiner, and copies may be taken.*—And be it enacted, that as soon as any such statement of objection shall be received by the examiner of recognizances, he shall put up an acknowledgment thereof in some conspicuous part of his office, and shall appoint a day for hearing such objections, not less than three and not more than five days from the day on which he shall have received such statement; and the petitioner or petitioners, and his or their agent, shall be allowed to examine and take copies of every such objection.

15. *Examiner of recognizances to decide on the objections.*—And be it enacted, that at the time appointed the examiner of recognizances shall inquire into the alleged insufficiency of the surety or sureties objected to, on the grounds stated in the notice of objection, but not on any other ground; and for the purpose of such inquiry the examiner of recognizances is hereby authorized to examine upon oath any persons who may be tendered by either party for examination by him, and also to receive in evidence any affidavit relating to the matter in dispute before him which shall be sworn before him, or before any Master of the High Court of Chancery or justice of the peace, each of whom is hereby authorized to take and certify such affidavit; and the examiner of recognizances shall have power, if he shall think fit, to adjourn the said inquiry from day to day until he shall decide on the validity of such objection, and, if he shall think fit, to award costs to be paid by either party to the other, which costs shall be taxed and recovered as herein after provided for the costs and expenses of prosecuting or opposing elec-

tion petitions; and the decision of the examiner of recognizances shall be final and conclusive against all parties.

16. *In case of death of a surety, the money may be paid into the Bank.*—And be it enacted, that if any surety shall die, and his death shall be stated as a ground of objection before the end of the time allowed for objecting to the sureties, it shall be lawful for the petitioner to pay into the Bank of England, on the account of the examiner of recognizances, the sum for which the deceased surety was bound; and upon the delivery of a bank receipt for such sum to the examiner of recognizances within three days after the statement of such objection, the sureties shall be deemed unobjectionable, if no ground of objection shall be stated to any other of the sureties within the time before mentioned for stating objections to sureties.

17. *Examiner of recognizances to report whether or not sureties are objectionable.*—And be it enacted, that in case the examiner of recognizances shall have received any statement of objection to the sureties, or any of them, to any such election petition, and shall have decided that such sureties, or any of them, are objectionable, he shall forthwith report to the Speaker that such sureties are objectionable; but if he shall have decided that such sureties are unobjectionable, or in case he shall not have received any such statement of objection, then as soon as the time heretofore allowed for stating any such objection shall have elapsed after the presentation of the petition (or as soon thereafter as he shall have decided upon the statement of objection), the examiner of recognizances shall report to the Speaker that the sureties to such petition are unobjectionable; and he shall make out a list of all election petitions on which he shall have reported to the Speaker that the sureties are unobjectionable, in which list the petitions shall be arranged in the order in which they shall be so reported upon; and a copy of such list shall be kept in the office of the examiner of recognizances, and shall be open to the inspection of all parties concerned.

18. *How petitions may be withdrawn.*—And be it enacted, that it shall be competent to the petitioner or petitioners, at any time after the presentation of the petition, to withdraw the same, upon giving notice in writing under his hand or their hands, or under the hand of his or their agent, to the Speaker, and also to the sitting member or his agent, that it is not intended to proceed with the petition; and in such case the petitioner or petitioners shall be liable to the payment of such costs and expenses as may have been incurred by the sitting member, to be taxed as herein-after provided.

19. *Proceedings when the seat becomes vacant, or the sitting member declines to defend his return.*—And be it enacted, that if at any time before the appointment of a Select Committee to try any such petition as herein-after provided, the Speaker of the House of Commons shall be informed, by a certificate in writing,

subscribed by two of the members of the said House, of the death of any sitting member whose election or return is complained of in such petition, or of the death of any member returned upon a double return, whose election or return is complained of in such petition, or that a writ of summons has been issued under the Great Seal of Great Britain to summon any such member to Parliament as a peer of Great Britain, or if the House of Commons shall have resolved that the seat of any such member is by law become vacant, or if the House of Commons shall be informed, by a declaration in writing, subscribed by any such member, and delivered to the Speaker within fourteen days after the day on which any such petition shall have been presented, that it is not the intention of such member to defend his election or return, in every such case notice thereof shall immediately be sent by the Speaker to the sheriff or other returning officer for the county, city, borough, district of burghs, port, or place to which such petition shall relate; and such sheriff or other returning officer shall cause a true copy of such notice to be affixed on or near the door of the county hall or town hall, or of the parish church nearest to the place where such election has usually been held; and such notice shall also be inserted, by order of the Speaker, in one of the next two London Gazettes.

20. *Voters may become a party to oppose the petition.*—And be it enacted, that at any time within fourteen days after the day on which any election petition shall have been presented, or within twenty-one days after the day on which any notice shall have been inserted in the Gazette to the effect that the seat was vacant, or that the member returned will not defend his election or return, or if either of the said periods shall expire during a prorogation of Parliament, or during an adjournment of the House of Commons for the Easter or Christmas holidays, then or before the second day on which the House shall meet after such prorogation or adjournment, it shall be lawful for any person or persons claiming to have had a right to vote at the election to which the petition shall relate to petition the House of Commons, praying to be admitted as a party or parties to defend such return, or to oppose the prayer of such election petition; and such person or persons shall thereupon be admitted as a party or parties, together with the sitting member if he be then a party against such petition, or in the room of such member if he be not then a party against the petition, and shall be considered as such to all intents and purposes whatever; and every such petition shall be referred by the House to the General Committee of Elections herein-after mentioned.

21. *Members having given notice of their intention not to defend shall not be admitted as parties.*—And be it enacted, that whenever the member whose election or return is so complained of in such petition shall have given notice as aforesaid of his intention not to defend the same, he shall not be afterwards allowed to appear or act as a party against such petition

in any proceedings thereupon, and he shall also be restrained from sitting in the House of Commons, or voting on any question, until such petition shall have been decided upon.

22. *At the beginning of every session, the Speaker to appoint a general committee.*—And be it enacted, that at the beginning of every session of Parliament, on or at any time before the day after the last day allowed by any order or resolution of the House of Commons then in force for questioning the returns of members to serve in Parliament, the Speaker of the House of Commons shall, by warrant under his hand, appoint six members of the House, who shall be willing to serve, and against whose return no petition shall be then depending, and none of whom shall be a petitioner complaining of any election or return, to be members of a committee, which shall be called the General Committee of Elections; and every such warrant shall be laid on the table of the House, and, if not disapproved by the House in the course of the three next days on which the House shall meet for the despatch of business, shall take effect as an appointment of such general committee.

23. *If the House disapprove the first appointment, a new appointment to be made.*—And be it enacted, that in case the House shall disapprove any such warrant, the Speaker shall, on or before the third day on which the House shall meet after such disapproval, lay upon the table of the House a new warrant for the appointment of six members, qualified as aforesaid, and so from time to time until six members shall have been appointed by a warrant which shall not be disapproved by the House as aforesaid.

24. *Disapproval may be general or special.*—And be it enacted, that the disapproval of the warrant may be either general in respect of the constitution of the whole committee, or special in respect of any member or members named in the warrant.

[To be continued.]

LAW OF LIBEL.

[Continued from p. 214.]

“*Mode of publication.*—2dly. As to the act and mode of publication. The truth of the general abstract proposition is undeniable, that when the subject of publication is in its own nature noxious and offensive, any mode of publication must be objectionable, and can be material only as regards the extent and degree of the mischief likely to be occasioned. If it be injurious to a man's character, to publish before a multitude of people that he is an adulterer or drunkard, it must, although to a less extent, be injurious to make the same charge in the hearing of a single individual. If a slander conveyed in writing be injurious to reputation, the same must be injurious when published orally, the more especially if that be done before a great number of hearers. The means of con-

veyance may be more or less prejudicial, in being the ducts of a greater or less portion of virulent and scandalous matter, but that consideration affects not the quality, but only the quantity of the poison.

"It is therefore obvious that distinctions founded merely on a consideration of the particular mode of communication must be in a great measure arbitrary and artificial, and dependent on reasons of collateral policy and convenience. There can, however, be no doubt that such distinctions are frequently of great use; although, on the one hand, they limit the operation of a principle adopted for the protection of reputation, yet on the other they prevent it from being carried to an extent which might be attended with collateral inconvenience, and they establish a plain and definite limit of criminal liability.

"The restraining the criminal offence to written defamation is a provision which, whilst it leaves the ordinary communications incident to the daily business of life unfettered, at the same time guards against the mischiefs which would result from unlimited licence, by subjecting to punishment all such as are guilty of the more deliberate, studied, and therefore more malicious, attacks upon character,—the more dangerous and injurious, as being more permanent in their nature, and more capable of extensive circulation. This, therefore, is a mode of restraint which, whilst it leaves open considerable channels for communications affecting character, yet visits all those attacks upon reputation to which the foregoing remarks on the necessity for penal restraint more particularly apply. To make mere oral communications penal, when they reflected on the characters of individuals, would be a heavy restraint on the ordinary intercourse of mankind, and would necessarily and unavoidably occasion much and vexatious litigation, and would weaken the great securities for the discharge of legal as well as moral obligations, the love of reputation, and the fear of public censure and disgrace.

"There is, no doubt, a marked distinction between oral and written communications, both as regards in ordinary cases the mind and intention of the publisher and the effect of the thing published.

"The committing of injurious and defamatory matter to writing evinces a more determined and deliberate purpose than is ordinarily to be inferred from mere words spoken. Communications by writing are, therefore, likely to make stronger impressions than such as are merely oral. They are permanent, and capable of wider diffusion. Such qualities and consequences are, however, dependent on circumstances, which may in particular cases invert the mischief likely to arise from a publication of the very same matter; as where a libel is published but to one person, and the same slander is spoken in the hearing of a large assembly, the oral may frequently be more mischievous in every respect than the written communication. Each mode of publication may, in truth, be more pernicious than the other, when the comparison is made in respect of dif-

ferent injurious consequences. Slanderous and abusive language may be much more likely to provoke the party to whom it is applied when spoken in the presence of many others than if addressed to him by letter, where an interval was allowed for the subsidence of sudden resentment. Publications of an impious or indecent character are rendered more mischievous, and are published with greater security to the offender, when they are diffused through the medium of the press, than they could possibly be made by mere oral communication.

"The defining the particular species or quality of those communications to which such a restraint ought to be applied must depend on the greater or less degree of inconvenience which would result from the absence of such a limit. Thus assuming, for the sake of illustration, that any written communication, the effect of which was to render another person odious or contemptible, was properly constituted a crime, little doubt can be entertained that, were the law to be extended indefinitely to all oral communications, the consequence would be highly inconvenient, in fettering ordinary conversation affecting the characters of individuals, and in greatly multiplying occasions for frivolous and vexatious prosecutions.

"On the other hand, a law which, with a view to the public peace, merely prohibited written insult, would be incommensurate with its object, viz., the preservation of the peace, which is quite as likely to be broken in consequence of an oral as of a written insult.

"When, however, considerations of extrinsic policy are taken into the account and allowed to operate in restraint of criminal liability, it is obvious that a distinction, founded on the mode of publication, including within its scope such modes as, by their capability and facility of diffusion and their permanency, must ordinarily be considered as the more dangerous, and excluding such as are merely oral, may well consist with general convenience.

"Whatever distinction, as concerns the civil remedy, may be made between oral and written slander, there are several reasons for confining penalties in respect of personal defamation to written publications. In the first place, to extend the offence to oral defamation generally would be inconvenient, as above stated. In the next place, the proof of an offence committed by the writing and publishing of illegal matter is far more definite and complete than where the offence is merely oral, when so much depends on tone and manner, the situation of the speaker, the circumstances under which he spoke, the understanding and memory of the hearers. On this account it is that the municipal laws of different countries so frequently found a distinction between that which is written, and that which is merely spoken.*

* See Montesquieu's *Spirit of Laws*, b. 12, c. 12. Hence it is, that according to the Law of England, mere words spoken do not constitute an overt act of treason.

"This distinction, however, founded as it is on a principle of convenience, cannot properly be extended beyond those communications which usually occur in the ordinary intercourse of society, in which the character and reputation of some particular member must necessarily and frequently be involved. It would be highly inconvenient that men's tongues should be fettered on such occasions, by the perpetual apprehension of criminal prosecutions. It is plain that no direct solicitation to violate the law can by possibility fall within any principle of expediency, so as to derive protection from it. The law of England has not only made a distinction in respect of the means of communication, but has also adopted the word 'libel' as a particular and technical term, by which communications of an immoral or illegal tendency, made by means of writings, pictures, or signs, are distinguished from those which are merely oral.

"Another question which presents itself is whether the mere acts of composing and writing noxious and injurious matter, with a view to, but without publication, ought to constitute an offence. The law of England, as will be seen, is by no means clear or consistent on this point.

"For extending the penal law to the mere act of composing with intent to publish noxious and injurious matter, which is never in fact intentionally published, it may be urged that this may properly be the subject of penal censure, inasmuch as a criminal intention is coupled with a distinct and decisive act done in furtherance of that intention; that the case is analogous to that of forgery, of which an offender is guilty by the mere act of making the false instrument with a criminal intention, although he never, in fact, publishes the writing so forged; that where the extension is consistent with admitted ordinary principles of penal law, it is desirable to extend the law widely, in order to the more complete prevention of injurious practices; that no one can compose and write libels, without incurring the risk of injury to others by an accidental and involuntary publication, and that if such writings be kept and not destroyed, a publication sooner or later must usually take place.

"It may, on the other hand, be said that writings undivulged are like a man's secret thoughts, which unless manifested by some outward act which injures or tends to injure the public, do not properly become the subject of penal visitation; that were it to be held that the composing should not be deemed penal unless done with the criminal intent of publishing, still the law would be objectionable, because it would be very difficult in such a case to ascertain the existence of such a prospective intention as a matter of fact,—that it would be like punishing a man for his secret intentions not manifested by any overt act.

"It is therefore probable, that to punish with strictness and effect the mere writing and printing of a libel, would be attended with more of mischief than of benefit to the community. Unless means were devised for subjecting

men's private closets to rigorous examination, founded on mere suspicion, such a law would, in a great measure, be nugatory,—it would rarely indeed be known that a man had composed and written a libel unless he had himself in some way published or divulged it, and where that was the case, the law would cease to be necessary. On the other hand, the hardship and insecurity which would result to society from subjecting their private mementos and writings to examination, by police officers, would be a public inconvenience of the most intolerable description. And though no power should be given to search on mere suspicion, yet would it frequently happen that the inferior ministers of the law would be ready to run the risk of consequences in the expectation of detecting cause for accusation against suspected or obnoxious persons.

[To be continued]

THE STUDENT'S CORNER.

TIME TO PLEAD.—JUDGMENT.

Sir,

The case of *Edensor v. Hoffman and another*, 1 D. P. C. 304, decided that the plaintiff's attorney may sign judgment if the order for time to plead is not drawn up and served in due time, notwithstanding he endorsed a consent. A. P., p. 268, states it was *contrary to good faith*. If the plaintiff's attorney expressly waived service of the order, then I think the judgment was irregular, as being signed contrary to good faith.

R. S.

The order may be treated as abandoned if not drawn up and served in forty-eight hours. *Charges v. Farrell*, 4 B & C. 865; *Sedgwick v. Allerton*, 7 East, 542.

E. P.

BREACH OF TRUST.—DUTY OF SOLICITOR.

A. H. by will appoints G. H. and J. N. executors, and directs them to sell all his estates by public auction or private contract, and declared it lawful for them to bid for and become the purchasers of all or any part of same which should be sold by public auction, notwithstanding their being executors, and directed the proceeds to be equally divided between the children of the said G. H. and J. N.—G. H. and J. N. did not sell by public auction, but become themselves purchasers at a valuation of two persons named by themselves, which proceeding was contrary to the testator's intention and declaration, and consequently a breach of trust. F. L., daughter of G. H., received her share of proceeds at twenty-one, and executed the usual release at that time, since which she entered into a matrimonial contract, and her intended husband was called upon to execute jointly with her a release of all further claims under the will, and ratifying the sale and conveyance to the executors; and a covenant for further assurance was added thereto, which it is conceived is unusual; but his solicitor objected to his executing such release, inasmuch as in his opinion it would have been confirmatory of the breach of trust.

Was this, or was it not the correct course for the intended husband's solicitor to adopt? or could he with due regard to his own reputation and liability, have advised his client to execute such an instrument? J. C.

POWER OF ASSIGNEES.

In p. 202, is an inquiry whether, under the circumstances there stated, the concurrence of the official assignee is necessary in the sale of a bankrupt's property. The office of the official assignee is ministerial only: his interference with the creditors' assignees is expressly guarded against; neither do any of the duties imposed upon him, in the least imply that his concurrence in the conveyance of the bankrupt's property is essential or necessary. If the creditors' assignees were not invested with full power and authority, the presumption would be, that the act intended that the concurrence of the official assignee or some other party should be obtained; but here this is not the case: "the whole of the property vests in them absolutely, so as to give them precisely the same rights and remedies with relation to it, as if the property vested in them in their own right individually." Archbold's Bankruptcy, p. 325.

PURCHASE.—JOINT-TENANT.

It appears to me, from the statement of the case of C. E. B., p. 106, *ante*, that A. and B. were joint-tenants, (Watkins on Conveyancing by Morley, Coote, & Coventry, p. 141, note.) Consequently, upon the death of B., A. will become entitled to the whole of the estate; but A. will only have to pay one moiety of the purchase money, and the administrator of B. will have to pay the other moiety. How your correspondent, C. E. B., can make A. and B. joint-tenants, and, at the same time, render A. liable for the whole of the purchase money, I can by no means conceive. A. B. C.

SELECTIONS FROM CORRESPONDENCE.

CHANCERY PRACTICE.—HAND-MOTIONS.

Sir,

I am informed it has recently been decided that an order obtained out of term to confirm a report absolutely (after service of the usual order *nisi*) is not rendered irregular by the mere circumstance of not having been moved for on a real day; and I am also told that the same rule has been extended to all other orders of course, made upon hand-motions. The opinion that such a practice has crept in and been sanctioned by the authority of the Courts seems pretty general; but I can find no reported case in which the point has been raised and decided. If any of your readers, or you yourself, Mr. Editor, will refer me to one or two, an obligation will be conferred upon

A PRACTITIONER.

EXAMINATION VIVA VOCE.

Sir,

By a letter in your number of May 29th 1841, signed "One who has not passed," I see *viva voce* examination is advocated. This is a course which I think ought never to be, and I hope never will be, adopted, inasmuch as the ordeal of having every word judged is too severe, when the interrogatories which produce those words are expected to be instantly answered without doubt or hesitation. You, sir, are sufficiently aware that *legal* subjects are not to be answered in this off-hand manner; and further, it is a fact that *viva voce* answers never are so good or well weighed as written ones at all our great *national* examinations. The excitement and trepidation are necessarily very great under the most ordinary circumstances, and quite trying enough without the addition of being *viva voce*. I venture to address you, because I see a heading to the letter I have mentioned:—"We insert the following letter because all classes of the profession are entitled to be heard on their *real* or *supposed* grievances:"—mine, I trust, is the latter sort.

T. C. H.

ABRIDGED CASES RELATING TO ATTORNEYS.

TAXATION.

It has been held that a husband, who became liable for bills of costs due from his wife, *dum sola*, and from her former husband, to a solicitor, was entitled to a taxation of the bills, though the relation of solicitor and client did not exist with the second husband.

It appeared that Henry Rumsey Williams had acted as the attorney and solicitor of David Jones, the first husband of Mrs. Abram, and that bills of costs were due to him on that account. David Jones died in 1826, and Mrs. Jones, now Mrs. Abram, became his legal personal representative, and was liable, out of his assets, to pay what was due to Mr. Williams, and she employed him, to some extent, as her solicitor. In 1831 Mrs. Jones was about to marry the petitioner, Mr. Abram; she was possessed of considerable property; and at the time of her second marriage she admitted that she was considerably indebted to Mr. Williams, and representing that her second husband was in want of money, she requested Mr. Williams to give time for payment.

The bills of costs related to business done for Mr. Jones, and after his death for Mrs. Jones. They were delivered to Mr. Abram on the 26th October, 1832, and a letter written to Mr. Williams by Mr. Abram on that occasion, shewed that the latter considered himself liable to pay what was due. He asked further indulgence, which was given, and it did not appear that Mr. Williams used any pressure for payment till the autumn of 1837, when applications for payment were renewed by Mr. Sheffer on behalf of Mr. Williams, and a payment

514*l.* was made; and one question on the argument was, whether this was a final settlement. Mr. *G. Richards* and Mr. *Cocherell*, on behalf of Mr. Williams, objected to any taxation, on the ground, first, that the bills were never taxable at the instance of Mr. Abram, between whom and Mr. Williams the relation of solicitor and client never subsisted; secondly, that the bills had been admitted to be correct, and had been finally settled and paid, and ought not now to be subject to taxation. *Vincent v. Venner*, 1 Myl. & K. 212, was cited on behalf of the petitioner.

The Master of the Rolls.—Neither the affidavits of Mr. Williams and Mr. Sheffer nor the receipt, shew that this transaction, or arrangement, as it is called, was a final settlement of account, or that the 514*l.* was received as full satisfaction of all that was due to Mr. Henry Rumsey Williams; Mr. Abram does not appear to have had any reason so to consider it, but Mr. Williams says he told Mr. Sheffer, his own agent, who confirms the statement, that he, Williams, would receive the 514*l.* in full satisfaction of all his demands on account of his bills of costs.

Under the circumstances proved in this case, I am of opinion that the petitioner did become liable to pay the bills of costs for business done for David Jones; and upon the authority of the cases cited in the argument, I am of opinion that the bills were taxable at his instance.

I am further of opinion, that although the bills were delivered in October 1832, and were, therefore, in the possession of the petitioner for nearly five years before September 1837, yet that the arrangement and payment then made, was not a final settlement of the bills as between the petitioner and Mr. Williams. The bills were in the hands of the petitioner, and a payment was made on account; but no final settlement, no release, and no delivery up of vouchers took place, and under the circumstances, I think the bills ought to be now taxed. *Waring v. Williams*, 2 Beav. 1.

RETAINER.

A corporation passed a resolution that the town clerk should defend the churchwardens of the town, in certain legal proceedings which were pending. The business was actually performed by the partner to the town clerk, who was an attorney. It afterwards appeared that the town clerk had not taken out his certificate until after the business was transacted; and it was held, that the partner could not maintain an action against the corporation for his bill of costs; there being no evidence whatever to prove a retainer.

The plaintiff, Mr. Steavenson, for some years previous to the month of March 1830, was an attorney practising in Berwick-upon-Tweed, and in that year he entered into partnership with Mr. Jamieson, who then held the

office of town clerk of that borough, for the duties of which office he received a salary from 1809 to 1830. By an accidental omission to take out his certificate, but which was not known to the defendants, Mr. Jamieson had ceased to be an attorney.

W. H. Watson, for the plaintiff, cited *Ravencroft v. Wise*, 1 Cr. Mee. & Ros. 203; 2 Dowl. P. C. 676; 4 Tyr. 471; *Stapleton v. Nurrell*, 6 Mee. & Wels. 9; 8 Dowl. P. C. 197; *Kingham v. Robins*, 5 Mee. & Wels. 94; *Archer v. English*, 1 Drink. 30.

Ingham, *contrd.*, cited *Cox v. Parry*, 1 Term Rep. 464; *Long v. Greville*, 3 Barn. & Cress. 10; *Seaton v. Benedict*, 5 Bing. 28.

Lord Denman, C. J.—The question is, whether there was any evidence to go to the jury, to shew a retainer of the plaintiff by the defendants. I do not think there is any such evidence. It appears that the town clerk and the plaintiff were partners, and it is not proved that the town clerk was also clerk of the peace, and, therefore, incapable of acting in the borough court; but even if that were not so, it appears that the town clerk was the person employed by the defendants. The plaintiff did the work as partner to the town clerk, but that does not vary the nature of the order of the guild, which was, that the town clerk himself should defend the churchwardens.

Patterson, J.—The only question is, whether the plaintiff was employed by the defendants. I find no evidence which could go to a jury, to shew that the defendants employed the plaintiff at any time. The order of the guild is that the town clerk should be employed. It has been contended by the plaintiff's counsel, that the town clerk not being on the roll as an attorney, the plaintiff was obliged to do the work for the defendants; but it does not appear that the defendants knew that fact, nor does it follow, because the town clerk was not an attorney, that therefore any person was justified in doing the business. As this is a bill for work done as an attorney, it is possible that the defendants may not be liable to pay any one.

Coleridge, J.—As to the effect of the order, it is contended, that inasmuch as the town clerk was also clerk of the peace, and not an attorney, he could not do the business himself. But the defendants made the order, believing that he was competent to do the work, and I do not think, therefore, that there is any inference to be derived in favour of the plaintiff from the order alone. Then what inference arises from the circumstance that the defendants saw the work done by the plaintiff? It may be that the defendants must have supposed that the plaintiff was doing the work, as for the town clerk whose partner he was, and not on his own account. Suppose, instead of being a partner, he had been merely a clerk to the attorney; it could not be said that the defendants were under any implied liability to pay him in that capacity. Upon these grounds, I agree, that our judgment must be for the defendants. *Steavenson v. The Mayor of Berwick*, New Term Reports, part 16, p. 265.

**LOCAL AND PERSONAL ACTS,
DECLARED PUBLIC AND TO BE JUDICIALLY
NOTICED.**

4 & 5 Vict.

[Continued from p. 279, ante.]

47. An act to alter and amend an act passed in the thirteenth year of the reign of king George the Third, for the better regulation of pilots and bridgemen, and for laying down moorings and preventing mischief by fire, in the port of King's Lynn.

48. An act to amend an act for the formation of a new cut or channel, and for otherwise more effectually improving the port and harbour of Belfast.

49. An act for maintaining Gourdon Harbour in the county of Kincardine.

50. An act for making and maintaining a harbour at Scrabster Roads in the bay of Thurso and county of Caithness, and road thereto.

51. An act for authorizing the Newport dock company to raise an additional sum of money; and to amend the acts relating thereto.

52. An act to enable the Ipswich dock commissioners to raise a further sum of money.

53. An act for making a pier in the parish of Portbury in the county of Somerset, with works and approaches connected therewith.

54. An act to enable the Monkland canal company to raise a further sum of money.

55. An act to consolidate, amend, and enlarge the powers and provisions of the several acts relating to the Forth and Clyde navigation.

56. An act to extend and amend the acts relating to the Newry navigation.

57. An act to repeal an act passed in the sixteenth year of the reign of his Majesty King George the Third, for the encouragement and improvement of the pilchard fishery carried on within the bay of Saint Ives in the county of Cornwall; and to make other provisions in lieu thereof.

58. An act for draining certain fen lands and low grounds in the parish of Burwell in the county of Cambridge, and for improving the navigation of the lodes or navigable cuts passing through the same.

59. An act for amending the several acts relating to the Edinburgh and Glasgow Union Canal, and for enlarging the Cobbinshaw reservoir.

60. An act to amend an act of her present Majesty for making and maintaining a reservoir at Deanhead in the parish of Huddersfield in the west riding of the county of York.

61. An act to enable the Wakefield water-works company to raise a further sum of money.

62. An act for supplying Birkenhead and other townships in the hundred of Wirrall in the county of Chester with gas; and for supplying Birkenhead aforesaid with water.

63. An act to establish a general cemetery for the internment of the dead in the parishes of Saint Dunstan Stepney and Saint Leonard Bromley, in the county of Middlesex.

64. An act for further extending the powers of several acts for enabling the commissioners of wide streets, Dublin, to widen and improve certain ways, streets, and passages, in the city and county of Dublin, and for raising funds to enable the said commissioners to carry the same into execution.

65. An act to alter, amend, and enlarge some of the powers and provisions of the acts for paving and otherwise improving certain streets in the parish of Saint Pancras in the county of Middlesex.

66. An act for amending an act passed in the twenty-seventh year of the reign of king George the Third, for paving, cleansing, lighting, and watching the streets and other public passages and places within the walls of the city of Canterbury and the liberties thereof, and other places near the said city.

67. An act for paving, gravelling, lighting, cleansing, draining, and improving the hamlet of Kentish Town and its vicinity, in the parish of Saint Pancras in the county of Middlesex.

68. An act for paving, lighting, watching, cleansing, and otherwise improving the town of Middlesbrough and the neighbourhood thereof, in the north riding of the county of York, and for establishing a market therein.

69. An act for paving, cleansing, and otherwise improving the town and borough of Stamford in the counties of Lincoln and Northampton.

70. An act to authorize and provide for certain improvements in the town and parish of Walton-le-Noken, otherwise Walton on the Naze, in the county of Essex.

71. An act to alter and extend an act passed in the first year of the reign of her present Majesty, intituled "An act for regulating and improving the borough of Newcastle-upon-Tyne."

72. An act for better assessing and collecting the poor rates in the borough of Kidderminster in the county of Worcester.

73. An act for the more easy and speedy recovery of small debts within the city and county of the city of Exeter.

74. An act for extending the jurisdiction of the Hatfield Court of Requests to certain places in the West Riding of the county of York, and in the counties of Lincoln and Nottingham.

75. An act to extend the jurisdiction of the Kingsnorton court of requests, and to amend the act relating thereto.

76. An act for the more easy and speedy recovery of small debts within the town and borough of Launceston and other places in the counties of Cornwall and Devon.

77. An act for the more easy and speedy recovery of small debts within the town of Blackburn and other places in the county of Lancaster.

78. An act for the more easy and speedy recovery of small debts within the town and

borough of Wigan, and the towns of Chorley and Ormskirk, and other places therein mentioned, in the county palatine of Lancaster.

79. An act to amend an act of her present Majesty, for the more easy and speedy recovery of small debts within the borough of Newark and other places in the counties of Nottingham and Lincoln.

80. An act for the more easy and speedy recovery of small debts within the town of Totnes in the county of Devon, and other places in the said county.

81. An act for the more easy and speedy recovery of small debts within and adjoining the district called The Staffordshire Potteries.

82. An act for the more easy and speedy recovery of small debts within the towns of Saint Helens and Prescott and places adjacent in the county palatine of Lancaster.

83. An act for the more easy and speedy recovery of small debts within the towns of Burnley and Colne, and places adjacent in the county Palatine of Lancaster.

84. An act for the more easy and speedy recovery of small debts within the city and borough of New Sarum and other places in the counties of Wilts, Hants, and Dorset.

85. An act for the more easy and speedy recovery of small debts within the town of New Sleaford, in the county of Lincoln, and other places in the same county.

86. An act for the more easy and speedy recovery of small debts within the town of Gainsborough in the county of Lincoln, and other places in the counties of Lincoln and Nottingham.

87. An act for the more easy and speedy recovery of small debts within the town or borough of East Retford in the county of Nottingham, and other places in the counties of Nottingham, York, and Lincoln.

88. An act to incorporate the proprietors of the Meerbrook Sough, and to enable them to levy and raise certain royalties, dues, and tolls for the continuation and maintenance thereof.

89. An act to enable "The Patent Rolling and Compressing Iron Company" to purchase certain letters patent, and to sue and be sued.

90. An act for regulating legal proceedings by or against "The Rhymney Iron Company," and for granting certain powers thereto.

91. An act for forming and establishing "Stead's Patent Wooden Paving Company," and to enable the said company to purchase certain letters patent, and for confirming the same.

92. An act to enable the Church of England life and fire assurance, trust, and annuity company to sue and be sued in the name of the managing director or other officer of the said company.

93. An act for regulating legal proceedings by or against the Neptune marine insurance company.

94. An act for enabling "The Imperial Life Insurance Company" to alter the mode of appropriation of profits directed by their deed of settlement, and for regulating legal proceedings by or against the company.

[To be continued.]

SUPERIOR COURTS.

Rolls Court.

PRACTICE.—INJUNCTION.—AFFIDAVITS.

The Court will not grant an injunction to stay the trial of an action at law, where the defendant at law has had ample opportunity for making an application to the Court at an earlier period, but neglects to do so until the eve of trial.

An order will be made, if necessary, in terms different from those contained in the notice of motion, if the parties have had the opportunity of bringing under review all the circumstances upon which the order is founded.

Where a suit is instituted to restrain proceedings at law, and there are other defendants besides the plaintiff at law, the plaintiff in equity, in support of a motion for a special injunction, cannot avail himself of the answers of the other defendants, but must confine himself to the case stated by the answer of the plaintiff at law.

Semble, that on an application for a special injunction, no affidavits can be read except to prove documents.

The bill in this case was filed to restrain proceedings in an action at law, brought by the defendant Hamburger for recovering the amount of a bill of exchange, accepted by the plaintiff, and which the plaintiff alleged had been given by him to Peters, another of the defendants, for a particular purpose, and by him fraudulently indorsed to a person named Carroll, also a defendant, who had paid it away to the defendant Hamburger. The plaintiff having given notice to the last named defendant of the misappropriation of the bill by Peters, and of his determination to resist any proceedings which might be taken against him in respect of it, now moved on the answer of the defendant Hamburger for a special injunction to stay the trial of the action, which was expected to take place in the Court of Exchequer in the course of that or the next day.

Pemberton and J. Russell for the plaintiff, stated the circumstances under which the bill of exchange was placed into the hands of Peters, and his consequent breach of faith in parting with it. What, then, was the answer given to the case stated in the bill by the defendant Hamburger, the plaintiff at law? He alleged that the defendant Carroll, being indebted to him in a sum of 48*l.* for board and lodging, the bill of exchange was given to him by Carroll for satisfaction of that amount, and also for such further sums as Carroll might become indebted to him.

It also appeared that before the action was commenced, a memorandum was given by Carroll to Hamburger, engaging to indemnify him against any costs that might be incurred in prosecuting the action against the plaintiff; and yet the solicitors for the defendants, previous to issuing the writ, wrote a letter to the plaintiff, stating that unless the amount of the bill was immediately paid, proceedings would

he commenced against all the parties to it ; so that it was pretty evident the defendants Carroll and Hamburger were aware of the circumstances under which the bill was given, and at all events there was such a case of suspicion as called for the interposition of a Court of Equity. The plaintiff was also willing, if the Court should so determine, to pay into Court the amount alleged to have been advanced by the defendant Hamburger on account of the note, or even the whole amount ; and all that he required was an order to stay execution.

Temple and Freeling, for the defendant Hamburger, opposed the motion. The Court never interfered with proceedings at law, unless it was clear that justice would not be worked out by allowing such proceedings to be continued. The plaintiff had also precluded himself from making his present application by his conduct with reference to the action, for the action was commenced in November last ; and the bill was filed immediately after, and, notwithstanding the answer was filed in the month of January last, no attempt was made to stop the proceedings at law until now, when the trial was just about to take place. Notice of trial had also been given, and postponed at the plaintiff's request, who had besides, for the purpose of delay, sought to get a special jury, but had been refused a rule for the purpose. The defendant had thus acquiesced in the proceedings at law, and could not now turn round and say that the case could not be properly decided by a jury. It was only by the merits confessed in Hamburger's answer that the motion could be supported, and the facts stated by that defendant showed that the bill came into his hands for a valuable consideration. The notice of motion was also to stay trial, and now the plaintiff asked for an injunction to stay execution, but he had no right to ask for an order different in terms to his notice of motion. If the Court deemed an injunction ought to issue on payment of any money into Court, it should at all events be confined to the amount of the bill, and the defendant should be at liberty to proceed for the costs, or some security should be given for them. *Blacoe v. Wilkinson*, 13 Ves. 454.

Pemberton in reply. The case is, that the bill was obtained for one purpose, and had been fraudulently applied for another ; and a very different view may be taken of such a question by a Court of Law to that which would be taken by a Court of Equity, for equitable frauds and legal frauds are differently dealt with. Courts of Equity, then, having concurrent jurisdiction in such cases with Courts of Law, will not compel a party to proceed at law where there were such strong grounds of suspicion as had been disclosed in the present case.

The *Muster of the Rolls* said that probable inferences would be quite sufficient to justify the Court's interference, but they must be drawn from the facts stated in the answer alone. It appeared that the bill had been given

to Peters for a particular purpose, and by him applied to another purpose. From his hands it got into the hands of Carroll, and then was passed to the defendant Hamburger. Notice was given on the part of the plaintiff, that payment of it would be refused, and that any proceedings to recover it would be resisted. Afterwards, a writ was issued, and on the same day an indemnity was given by Carroll to Hamburger. Not long after the bill was filed, and early in January, the answer of the defendant Hamburger was put in ; that answer states the case on which the plaintiff must rely. On the 1st of May, notice of trial was given, and no application was made by the plaintiff until the very eve of the trial. It was objected that the motion was only to stay trial ; and undoubtedly upon an *ex parte* application, the strict terms of the notice should be attended to ; but when the parties had an opportunity of discussing all the circumstances, the Court was not disposed to restrict the exercise of its jurisdiction by confining the party moving to the exact terms of the notice ; and if in the present instance the Court had thought the injunction should be granted, it would not have felt itself prevented from interfering by such a narrow view as had been suggested. On the merits, however, disclosed, his Lordship said he did not think the motion ought to be granted. The defendant denied all knowledge of fraud, and stated the circumstances under which the bill came into his possession. There were certainly circumstances of suspicion, but not of sufficient weight to prevent the party from exercising his legal right, and the motion must, therefore, be refused with costs.

Pemberton, in the course of his argument, having referred to certain statements in the answer of Carroll, an objection was taken to their being read, and the M. R. held that he could only refer to the answer of Hamburger, the plaintiff at law.

An objection was also made to his reading an affidavit which had been made to explain certain circumstances referred to in the answer, and it was stated by the counsel for the defendants that the Chancellor had recently determined, that on such a motion no affidavits could be read except for the purpose of proving documents.

Pinkus v. Hamburger, May 27 & 28, 1841.

Queen's Bench.

[Before the four Judges.]

PRACTICE.—MANDAMUS.

The Court will not grant a mandamus to public officers to pay over money to claimants, except where it is distinctly admitted to be due in fact.

If mere affidavits on an application for a mandamus satisfy the judgment of the Court, it is not a matter of course that the Court should grant a mandamus to enable one of the parties to try the truth of the facts so stated on the face of the affidavits.

In this case a rule had been obtained, calling on the defendants to shew cause why they

should not issue their warrant to the Lords of the Treasury to pay over to a Mr. Harry Stoe Mann the sum of 500*l.*, claimed as due to him as purser of the ship *Perseus*. It appeared that Mr. Mann had been tried by court-martial under 22 G. 2, c. 33, and dismissed the service in 1825. He now objected to the proceedings under the court-martial, first, because the Lords of the Admiralty had no authority to direct the court to be holden; secondly, because one of the officers who composed it was not qualified to sit upon it, he having been too rapidly promoted; thirdly, that the deputy Judge Advocate had no jurisdiction; fourthly, that there was no authority for any martial jurisdiction, the thing imputed being either matter of civil or criminal proceeding. The case had been decided in this Court in that year.^a He now applied for his arrears of pay from the month of July, 1824. The Lords of the Admiralty hail, in the usual manner, made an order for the payment of Mr. Mann's salary, but had afterwards cancelled it.

The *Attorney General* and Mr. *Shepherd* shewed cause against the rule. The applicant has received all the wages due to him before the time of his trial and conviction by the court-martial; and this Court will not, on an application like the present, review a decision formerly pronounced by it in an action tried in the ordinary manner. As the circumstances now stand, this Court has no jurisdiction to interfere with the Lords of the Admiralty.

Mr. *Platt*, in support of the rule.—The applicant ought to be allowed the opportunity of going before a jury to try whether the facts stated in the affidavit are correct or not.

Lord *Denman*, C. J.—I think that we cannot make this rule absolute, without undertaking to revise the proceedings of all the public offices. The only case that appears to justify the present application, is that of the *Queen v. The Lords of the Treasury*,^b in the case of a person named Smyth. There we did issue a *mandamus*, commanding the Lords of the Treasury to pay over a sum of money to Smyth, but that was, after repeated admissions made by the Lords of the Treasury that they had money in their hands received by them to his use. That was an inevitable decision. I know that that case has since been questioned, but I continue to be of opinion that that decision was right, and that under the circumstances there stated we were bound to make the rule for a *mandamus* absolute. An expression of mine in another case^c has been referred to, in which I stated that the parties there might have brought that decision into question, as if I meant to question the propriety of the first decision. I said that, not that I meant in the least degree to intimate a doubt of the correctness of that decision, but on the contrary that they had the opportunity of bringing the deci-

sion into question, and that they had not done so. The circumstances here by no means resemble those of Smyth's case. It is true that here there was an order of the Lords of the Admiralty for the payment of the money, but they, by the rules of the service, were bound to do what they afterwards did; and seeing that that order had been made under a mistake, they were bound to discharge the order. The order, therefore, gave no indefeasible right to the applicant, and this rule, the object of which is to enforce that order, must be discharged.

Mr. Justice *Patteson*.—When this rule was granted, the Court had considerable doubt whether the circumstances of the case were such as would justify the issuing of a *mandamus*. Smyth's case is very distinct from the present. There the Lords of the Treasury had money of his—money specifically appropriated to him in their hands; and yet though they repeatedly admitted that to be the fact, they refused to pay him that money unless he entered into an agreement to perform certain things which they required, as conditions precedent to the payment of the money. Under the circumstances of that case they had no right to do that. In the affidavits on which this application was founded, there were no facts stated shewing why the order for the payment was rescinded. Those facts have now been brought before us, and we see that the Lords of the Admiralty only acted in the ordinary discharge of their public duty. We cannot hold that the Lords of the Admiralty are concluded by the mere admission made on the face of the order, when that admission was afterwards duly recalled by them, by rescinding that order when they found it to be wrong.

Mr. Justice *Williams* concurred, and expressed a clear opinion that the decision in *Smyth's case* was perfectly right, and that it was entirely different from the present.

Mr. Justice *Coleridge*.—I agree with the rest of the Court in the decision of this, and of the former case, and I am clearly of opinion that the plainest distinction exists between them. *Smyth's case* was, as it has been well expressed by my lord, an inevitable decision. But I thought then, and I have since had ample reason to know, that that decision would be mistaken. I am glad of the opportunity that has now occurred for the Court to explain and affirm that decision. The facts stated on the affidavits here form an answer to the application. Then it is said that the *mandamus* ought to go, in order to enable the applicant to contest the truth of such facts. But that argument goes too far, for it would shew that in every case whatever, however satisfactory the answer to the complaint, we should still be bound to send that answer for a further enquiry. On such a rule the business of the Court could not go on.

Rule discharged.—*The Queen v. The Lords of the Admiralty*, T. T. 1841. Q. B. F. J.

^a *Mann v. Owen*, 9 Barn. & Cres. 595.

^b 1 Harr. & Woll. 534; 4 Ad. & Ell. 286.

^c *Reg. v. The Lords of the Treasury*, 2 Harr. Woll. 67; 4 Ad. & Ell. 494.

Queen's Bench Practice Court.

REPLEVIN.—STAYING PROCEEDINGS.—SHERIFF'S INDEMNITY.—CONDITION OF BOND.—LACHES.

It is not regular for a sheriff to take a replevin bond in a penalty of a greater amount than double the value of the goods distrained; but the objection to the bond on that ground must be made promptly.

The proceedings on a replevin bond may be stayed on the terms of paying the amount of the appraised value of the goods, if less than the rent, double costs, and the costs of applying to the Court.

In this case certain goods had been distrained and replevied. The sheriff took the replevin bond in more than double the amount of the goods distrained, according to the appraisement, the single value being less than the amount of the rent in arrear. The bond also contained an indemnity to the sheriff for making the replevin. The bond was dated the 17th September 1840, and assigned in February 1841. The original action was tried on the 1st December 1840, and a verdict found for the defendant. In Easter Term an application was made to set aside the bond on the ground that it was taken in more than double the appraised value of the goods, and that the condition of the sheriff's indemnity had been introduced; or else to stay proceedings on the bond on terms.

Warren shewed cause against the rule, and contended that the fact of the amount of the penalty being greater than the appraised value of the goods was not a valid objection, as the words of the 11 Geo. 2, c. 19, were only directory. As to the indemnity of the sheriff, that could form no objection, as the sheriff was entitled to obtain an indemnity for granting the replevin.

C. Jones supported the rule, and contended that the sheriff was bound to follow the provisions of the statute. If he did not, the course pursued by the sheriff might be rendered the means of great oppression, if he could refuse to grant a replevin, unless security to a greater amount than that authorized by the statute was given. At any rate the sureties were entitled to have proceedings stayed on terms.

Cur. adv. vult.

Coleridge, J.—This was a rule obtained for setting aside a replevin bond, or staying the proceedings thereon, upon payment of 12*l.* 7*s.*, the appraised value of the goods distrained, with the costs of assigning the bond.

The irregularity alleged as the ground for the first alternative of the rule, is that the bond has been taken for a penalty of 50*l.*, the value of the goods being only 12*l.* 7*s.*, and the stat. 11 G. 2, c. 19, enacting that it shall be taken in double the value of the goods distrained.

The condition of the bond was not only for appearing and prosecuting the suit with effect, and without delay, and for making return of the goods, if a return was awarded, but for indemnifying the sheriff for granting the replevin. It is therefore not simply a bond under the statute of Geo. 2.

The practice of adding the condition for the sheriff's indemnity, is not only frequent, but of long standing. In *Morgan v. Griffith*,^a I find it stated by Lee, C. J., in delivering the judgment of the Court, that it is a condition in all replevin bonds; and as this judgment was delivered in M. T. 14 Geo. 2, only three years after the passing of the statute of the 11 Geo. 2, c. 19, the practice had probably been in existence before, and was not affected by it. It would certainly, therefore, not be proper for me to set aside this bond on account of the insertion of this condition; and if so, I think it equally follows, that I ought not to set it aside on account of the penalty being incurred beyond the amount specified by the statute. For although it is not very easy to trace with certainty the practice as to sheriff's bonds, and perhaps it has not always strictly followed the several provisions of the statutes of Westm. 2, and 11 G. 2, c. 19; yet I think it appears that the sheriff has been long allowed to take but one bond under both; and if he may insert more in the condition than the latter statute alone authorizes, there is nothing unreasonable in allowing him to add to the amount of the penalty in proportion. No case was cited in which the Courts have set aside a bond for this irregularity; although in many cases which have been brought before them, and which have been cited in the argument, the same ground of objection existed. Whether such a bond as this is properly assignable, and if assignable, to what extent the assignment will operate, are very different questions, which, however, I do not feel myself called upon to decide on the present motion. The bond was executed in September last, and assigned in February; and it appears by the affidavits that the proceedings commenced in that month. If, therefore, the obligors wished to set it aside for any irregularity or non-compliance with the statute by the summary interference of the court, they were bound to make their application more promptly. I wish, however, to be understood as in no respect sanctioning the practice. On the contrary, it seems to me very objectionable for the sheriff, as a public officer, not to abide by the plain directions of the statute. He can incur no risk if he does, and acts with common prudence, and it might lead to oppression, if he could refuse a replevin because the owner of the things distrained was not in a condition to find sureties to a large and indefinite amount. I only refuse to interfere in this way, on account of the frequency of the practice and the lateness of the application. It remains to consider the latter branch of this rule; on what terms the proceedings may be stayed. It seems to me, that my brother Patterson has laid down the true rule on this matter, founded on the right principle, in the case of *Hunt v. Round*.^b The replevin deprives the landlord of the security of the goods distrained, and the stat. 11 G. 2, c. 19, was passed to prevent vexatious replevins; and it gives the landlord the security of the two sureties and the double costs; but that

^a 7 Mod. 380.

^b 2 D. P. C. 558.

is still with reference to the two objects—the amount of the rent, and the value of the goods. If the rent is less than the value of the goods, the object of the statute is satisfied by giving the amount of the rent, and the double costs; if the amount of the rent exceeds the goods, then in order to satisfy it, the landlord is entitled to the value of the goods with the costs as before. In this case, the rent is 13*l.*; the goods have been appraised at 12*l.* 7*s.*, and no question has been raised on the valuation. On payment, therefore, of 12*l.* 7*s.* with double costs, and the costs of this application, let the latter part of the rule be made absolute.

Rule absolute.—*Miers v. Lockwood*, E. T. 1841. Q. B. P. C.

MISCELLANEA.

READERS, UTTER, AND INNER BARRISTERS.

In the reign of Henry the 8th a return was made to the King, in which the following description is given of Readers or Benchers, and Utter and Inner Barristers, as appears by Mr. Serjeant Manning's book called *Serviens ad legem*:—

"The whole company and fellowship of learners is divided and sorted into three parts and degrees, that is to say, into Benchers, or, as they call them in some of the houses, Readers, Utter-barresters, and Inner-barresters.

"Benchers or Readers are called, such as before time have openly read; and to them is chiefly committed the government and ordering of the house, as to men meetest, both for their age, discretion, and wisdoms; and of these is one yearly chosen which is called the Treasurer, or, in some houses, Pensioner, who receiveth yearly the pension money, and therewith discharges such charges as above-written; and of the receipt and payment of the same is yearly accountable.

"Utter-barresters are such, that for their learning and continuance, are called by the said Readers to plead and argue in the said house doubtful cases and questions, which, among them, are called Motes, at certain times propounded and brought in before the said Benchers or Readers; and are called Utter barresters, for that they, when they argue the said Motes, sit uttermost on the formes, which they call the Barr;^a and this degree is the chiefest degree for learners in the house, next the Benchers; for of these be chosen and made the Readers of all the inns of chancery; and also of the most ancient of these is one elected yearly to read amongst them, who after his reading is called a Benchers, or Reader.

"All the residue of learners are called Inner-barresters,^b which are the youngest men,

that, for lack of learning and continuance, are not able to argue and reason in their Motes; nevertheless whosoever any of the said Motes be brought in before any of the said Benchers, then two of the said Inner-barresters, sitting on the same forme with the Utter-barresters, doe, for their exercises, recite by heart the pleading of the same Mote case in Law-french; which pleading is the declaration at large of the said Mote-case; the one of them taking the part of the plaintiff, and the other the part of the defendant."^c

THE EDITOR'S LETTER BOX.

We cannot undertake to state the comparative merits of the two works mentioned by "An Articled Clerk." We can only say that the older work possesses greater authority, but the other, we presume, carries the law down to a more recent period.

We are informed that the hours of attendance at the Master's of the Common Law Courts to tax costs until the 31st August, are as follow:—In the *Queen's Bench* on Tuesdays, Thursdays, and Fridays, from 11 till 3 o'clock, and on the other days from 1 till 3; in the *Common Pleas* and *Exchequer of Pleas* on Tuesdays, Wednesdays, Thursdays, and Fridays, from 11 till 3, and on other days from 1 till 3. The office door is closed at three, but the Master remains if there be any persons in attendance requiring their costs to be taxed.

The Quarterly Digest of all reported Cases in all the Courts during the last three months, will be published on Saturday next.

The letters of "Zenas;" E. P., and "Lector;" shall be attended to.

advice of Her Privy Council and the Justice of Her Bench and the Common Place at Westminster, E. 16 Eliz. 1574." Cod. Nig. Linc. Inn, v. 181; Reg. Hosp. Med. Temp. 112 a; Dugd. Orig. Jurid. 312. And see 3 Rot. Parl. 58 a, 593 a.

^c Waterhous, Fortescutus Illustratus, or Comment. on Fortescue, 543, 544. This return describes the mode of study and the course of living at the inns of court with considerable minuteness. It has no date, but as Bacon was Lord Keeper in the reign of Elizabeth, the statement must have been drawn up in the latter part of the reign of Henry VIII.

"John Hill brought action on the case against Gyddy, and recited that he was an utter-barrester learned in the law (erudite in le ley utter-barrester) and practised it, and by his knowledge gained his living." 2 Anderson, 41. Therefore, at the time this action was commenced, which appears from Moore, 695, to have been in T. 33 Eliz. (1591), Hill had not ceased to be an utter-barrester, though he had become a reader. As Hill was called to be serjeant in November, 1591, and the writ of error was not argued till 1596, this is sometimes called *Serjeant Hill's case*, Palmer, 65; 2 Roll. Rep. 145.

^a This term is also used with reference to the Courts at Westminster.

^b "Student" and "inner barrester" are used as synonymous terms in "Orders for the Government of the Inns of Court, established by command of the Queen's Majesty, with the

The Legal Observer.

SATURDAY, AUGUST 14, 1841.

— "Quod magis ad nos
Pertinet, et nescire malum est, agitamus.

HORAT.

THE LAW OF EVIDENCE.

PRESUMPTIVE PROOF.

THE vast field of the Law of Evidence has been much narrowed by the several recent statutes of limitation and prescription; but it is important to consider the doctrines of presumption as applicable to titles, and in what cases particular *facts* are presumed to exist, and the *events* which after a given time are presumed to have happened.

When the fact itself cannot be proved, that which comes nearest to the proof of the fact is, the proof of the circumstances that necessarily or usually attend such a fact, and these are called presumptions, and not proofs,^a for they stand instead of the proofs of the fact till the contrary be proved; but presumptions may be repelled by contrary presumptions.^b

Lord Coke distinguishes presumptive proof, by which he says juries are often induced, into — 1. Violent presumption, which amounts to *plena probatio*; as, if one be stabbed in a house, and a man be seen running out of it, with a knife bloody, and none else in the house. 2. *Præsumptio probabilis*, which moves a little. 3. *Præsumptio levis*, which moves not at all.^c

We shall first consider the cases of presumption as applicable to titles.

Possession of land for twenty years^d being evidence of a fee, it is held that such

possession must be evidence of all that is necessary to support and perfect the title to an estate in fee. Long enjoyment,^e therefore, under a title, which could only be by record, is strong evidence from which a jury may presume the record to have existed, whether it be a grant from the crown within the time of legal memory, or even^f an act of parliament. But presumptions must have grounds on which to stand:^g and to warrant a presumption from length of time, the possession must have been adverse, and under the eye or with the knowledge^h of those who were immediately interested in resisting it, and capable of granting the right to it. For though the inference is drawn for the purpose, and from a principle of quieting the possession,ⁱ not from a belief or supposition that the instrument inferred actually existed; yet there must be something from which the inference is to arise: there must be a potential existence on which to raise the presumption of an actual existence.

Where a lease is proved, and it is also shewn that the claimant has received rent within twenty years, this infers a seisin in fee, and throws it upon the opposite party to shew that the lease is subsisting. And *Eyre, B.*, held that where rent is received without any proof of a lease, this is also *prima facie* evidence for the plaintiff, and

^a 3 T. R. 157; 7 T. R. 492; *Roe v. Ireland*, 11 East, 280.

^f *Farcar's Case*, Skin. 78.

^g *Goodtitle v. Chandos*, 2 Burr. 1072.

^h *Daniel v. North*, 11 East, 372.

ⁱ *Eldridge v. Nott*, Cowp. 214.

^a Gilb. Law Ev. 303.

^b 1 Marsh. 68.

^c Co. Litt. 6.

^d *Denn v. Bernard*, Cowp. 595.

obliges the defendant to shew that it is either a quit rent, or that the term is unexpired.^k

Adverse possession for a shorter period than twenty years, though it be not of itself, without other evidence to support the right, a sufficient ground on which to presume a grant, may yet be used as presumptive evidence of a license. Indeed, for the furtherance of justice, presumptions will be made in favour of a rightful possession, with regard to time.

Where trustees ought to convey to the beneficial owner, it will be presumed that they have conveyed accordingly; or, where the beneficial occupation of an estate by the possessor (under an equitable title) induces a probability that there has been a conveyance of the legal estate to the person who is equitably entitled to it, a conveyance of the legal estate may be presumed. But if it appear in a special verdict in ejectment that such a term is still outstanding in a trustee, who is not joined in bringing the ejectment, the *cestui que use* cannot recover.^l The jury may presume an old unsatisfied term surrendered to the *cestui que use*, in order to substantiate a lease executed by him.^m And in the case of a plain trust, where the trustees were directed to convey to a devisee on his attaining twenty-one, the jury may be directed to presume a conveyance at any time afterwards, though considerably less than twenty years.ⁿ

The existence of a grant being inferred from usage, it follows as a corollary, that the same usage must determine the extent of it. We know the right only as we collect it from the enjoyment, and therefore the enjoyment must be the measure of it. Hence, if a right to water is presumed from an enjoyment of twenty years, it can only be to so much as has been appropriated during that period.^o So, where a building, having been used for twenty years as a malt-house, was afterwards converted into a dwelling-house, it was holden to be entitled only to the same degree of light in its new state, which it had in its former state; so that the owner of the adjoining ground might lawfully erect a wall which prevented the admission of sufficient light

for domestic purposes, if what was still admitted were enough for the making of malt.

Length of time affords the same ground of presumption in the case of *incorporeal*, as of corporeal hereditaments.

Thus, an uninterrupted enjoyment of an easement for twenty years or upwards is considered as evidence of a right of enjoyment; that is, as evidence from which a jury may presume a conveyance or agreement; as in an action on the case for obstructing light,^p or in the case of a market regularly kept above twenty years,^q or in the case of adverse enjoyment of a way for upwards of twenty years, without any thing to qualify or explain it.^r So, a faculty from the ordinary may be presumed from long uninterrupted usage of a pew in a church, claimed as appurtenant to a messuage.^s

A defendant in trespass cannot plead, by way of justification, that he was possessed of a right of common over the *locus in quo*, under a deed of grant by a former owner, alleged to be since lost or destroyed by accident and length of time, and therefore not proffered in court, of which the date and names of the parties are unknown.^t

The enjoyment of an easement, as of right for twenty years next before the commencement of the suit, within the statute 2 & 3 W. 4, c. 71, means a continuous enjoyment as of right for the twenty years next before the commencement of the suit of the easement, as an easement without interruption acquiesced in for a year. It is, therefore, defeated by unity of possession during all or part of the twenty years.^v

Where lights had been opened and enjoyed without interruption for above twenty years, during the occupation of the opposite premises by a tenant; that will not conclude the landlord of such opposite premises, without evidence of his knowledge of the fact, which is the foundation of presuming a grant against him; and, consequently, will not conclude a succeeding tenant who

^k *Harper v. Brock*, 3 Wooddes. 333.

^l *Goodtitle d. Oiden v. Jones*, 7 T. R. 47.

^m *Doe d. Buxerman v. Sybourn*, 7 T. R. 2.

ⁿ *England v. Slade*, 4 T. R. 682.

^o *Bealey v. Shaw*, 6 East, 208.

^p *Martin v. Gubie*, 1 Camp. N. P. 320;
^q *Chandler v. Thompson*, 3 Camp. 80.

^r *Letwin v. Price*, 2 Saund. by Williams, 175.
^s *Dunghel v. Wilson*, *Id.*; *Darwin v. Upton*, *Ibid.*, and 3 T. R. 159.

^t *Holcroft v. Heel*, 1 Bos. & Bull. 401; and 3 East, 301.

^v *Campbell v. Wilson*, 3 East, 294; *Keymer v. Sumners*, Bull. N. P. 74; *Curr v. Heaton*, 3 Gwill. 1252.

^w *Rogers v. Brooks*, 1 T. R. 431, a.; *Griffith v. Matthews*, 5 T. R. 296.

^x *Hendy v. Stephenson*, 10 East, 55.

^y *Onley v. Gurdner*, 4 Mee. & Wels. 496.

was in possession under such landlord from building up against such encroaching lights."

Uninterrupted possession of a pew in the chancel of a church for thirty years is presumptive evidence of a prescriptive right to the pew in an action against a wrong-doer, but that presumption may be rebutted by proof that the pew had no existence thirty years ago.*

The following cases relate to arrears of annuity and rent:—

If, in an action of covenant for arrears of an annuity, the defendant plead a release, lost by time and accident, and to induce the jury to presume a release, show that the annuity was not paid for *seventeen years*, and that the plaintiff had borrowed money of the grantor of the annuity, and regularly paid him interest, without setting off the annuity: the jury ought not to find for the defendant, unless they are satisfied that there is fair ground for supposing, that, at some particular period during the seventeen years, the plaintiff actually executed a release of the annuity; and to rebut the presumption of such a release, the jury must look at the situation of the parties, and take into their consideration the circumstances of the plaintiff being a near relative of the grantor of the annuity, having large expectations from him, and the grantor being a very old man, peremptory with his relatives, and very attentive to his pecuniary concerns.†

If a man gives a receipt for the last rent, the former is presumed to be paid, because he is supposed first to receive and take in the debts of the longest standing; especially if the receipt be in full of all demands, then it is plain there were no debts standing out. And if this be under hand and seal, the presumption is so violent, that the law admits of no proof to the contrary.‡

We shall now advert to the cases in which certain facts and events are presumed to have occurred or happened.

Thus the fact of the birth of a child during a lawful marriage, is *prima facie* evidence of its legitimacy. But if there has been a divorce, *à mens et thoro*, a child born afterwards (as a year after the sentence, &c.) is presumed to be illegitimate.¶

Where the ancestor died seised, leaving

a son and daughter infants, and on the death of the ancestor a stranger entered, and the son soon after went to sea and was supposed to have died abroad within age; the daughter was not allowed the period of twenty years to make her entry after the death of her brother, but only ten years; more than twenty years having on the whole elapsed since the death of the person last seised.‡

If a ship has been missing, and no intelligence received of her within a reasonable time after she sailed, it shall be presumed that she is lost.¶

Persons once in being shall be intended still living, if the contrary is not proved;§ but where no account can be given of them, this presumption of the duration of life ceases at the expiration of seven years from the time they were last known to be living; a period which has been fixed by analogy to the statute of bigamy, 1 Ja. 1, c. 10, and also to the statute next following.*

The 19 Car. 2. c. 6, recites that "persons for whose lives estates have been granted, have gone beyond the seas, or so absented themselves for many years, that the lessors and reversioners cannot find whether such persons be alive or dead, and by reason thereof have been held out of possession, it is therefore provided, that if such person or persons, for whose life or lives such estates have been or shall be granted as aforesaid, shall remain beyond the seas, or elsewhere absent themselves in this realm, by the space of *seven years* together, and no sufficient and evident proof be made of the life or lives of such person or persons respectively, in any action commenced for recovery of such tenements by the lessors or reversioners; in every such case the person or persons upon whose life or lives such estate depended shall be accounted as naturally dead; and in every action brought for the recovery of the said tenements by the lessors or reversioners, their heirs or assigns, the judges, before whom such action shall be brought, shall direct the jury to give their verdict, as if the person so remaining beyond the seas, or otherwise absenting himself, were dead."

In the case of an ejectment, where the party seised in fee made a lease in reversion

* *Daniel v. North*, 11 East, 372.

† *Griffith v. Matthews*, 5 T. R. 296.

‡ *Bigg v. Roberts*, 3 Car. & P. 43.

§ *Co. Litt.* 373; *Gillb. Ev.* 142.

¶ *St. George and St. Margaret Parishes*, 1 Salk. 123.

‡ *Doe, d. Francis v. Jesson*, 6 East, 80; S. C. 2 Smith, 236.

* *Green v. Brown*, 2 Str. 1199.

† *Thrugmorton v. Walton*, 2 Ro. Rep. 461; *Wilson v. Hodges*, 2 East, 312.

‡ *Doe, v. Jesson*, 6 East, 80; *Hopewell v. Dessina*, 2 Camp. 113.

for ninety-nine years, to commence after the death, or other sooner determination of the estates of a father and son, who had then a lease in possession for ninety-nine years, if they or either of them so long lived. The plaintiff proved the death of the son; but, as to the father, the proof was, that he had been reputed dead, and *nobody had heard of him for fifteen years* last past. Upon an objection that this last proof was insufficient; it was holden clearly by *Holt, C. J.*, upon the perusal of the above statute, that this case was within it, as the lessor of the plaintiff had a term in reversion in the lands, and so was a reversioner within the very letter of the statute; and he held, that a remainder-man was within the equity of that law.^f

By another statute bearing on this subject, the 6 Ann. c. 18, it is recited that persons as guardians and trustees for infants, husbands in right of their wives, &c., having estates or interests determinable upon life or lives, have continued to receive the rents and profits after the determination of their estates or interests, and it is therefore enacted that "any person claiming any estate in remainder, reversion, &c., upon affidavit that he hath cause to believe that the tenant for life is dead, and that the death is concealed, may once a year have an order from the Great Seal for the *production of such person*; and, upon the guardian, trustee, &c., *refusing or neglecting to produce* such person, he shall be taken to be dead, and the remainder-man or reversioner shall enter upon the estate in like manner as if such person were actually dead."

THE LAW OF JOINT STOCK COMPANIES.

JOINT STOCK BANKS.

We have very recently collected the cases relating to suits by and against Joint Stock Banks, see 21 L. O. 19, 129, 372, and *ante*, p. 18; we now add the following.

In an action by a banking co-partnership, suing under the provisions of the 7 Geo. 4, c. 46, the declaration commenced "W. C., manager of a certain joint stock society, &c., who has been duly named and appointed plaintiff." This was held not sufficient, without alleging that he was named such manager in pursuance of the act. *Christian v. Peart*, 9 Dowl. 291.

INDICTMENT.

A joint stock company is liable to be indicted for breaches of duty, such as the non-repair of bridges, which it is their duty to repair. This was decided by Mr. Baron Parke in the following case. "There are instances of corporations aggregate being indicted for non-repair of bridges and roads, *ratione tenuræ*. The only difficulty is as to how they are to appear. If the indictment were in the Court of Queen's Bench, they would appear by attorney; but the question is, whether they can appear by attorney here. At present, I see no other way than by removing the indictment by *certiorari*, and the company pleading in the Court of Queen's Bench by attorney. There is no doubt that an indictment lies against a company, if they will not do their duty. They have no person, and must appear by attorney. *Whateley*—They might be compelled by *mandamus*. *Parke, B.*—They may also be indicted; and it seems to me that they must also have a *certiorari*, and appear by attorney; or if they do not, there may be a distress *ad infinitum*. *Reg. v. The Birmingham and Gloucester Railway Company*, 9 C. & P. 469.

THE PROPERTY LAWYER.*

PURCHASE OF STOCK.

WHERE a purchase is made by a parent in the name of a child, the presumption is that it is made as an advancement, and the *onus* of proving a trust attaches on the other side, and the fact of the parent remaining in possession, is insufficient to rebut the presumption,^b although there are conflicting cases as to this last point. This rule has lately involved circumstances interesting to the profession, as arising on some stock purchased by Lord Stowell, in the name of his only son, Mr. Scott, who has thus added another name to the long list of eminent lawyers, whose dealings with their property have had to be construed by the Courts. The judgment of Lord *Lungdale, M. R.*, displays his accustomed care and ability, and we shall extract a portion of it, both as illustrating the law on this point, and as containing the important parts of the case. The representatives of Lord *Eldon* were among the claimants.

"That contemporaneous acts, and even contemporaneous declarations of the parent, may amount to such evidence, has often been decided. Subsequent acts and declarations of the parent are not evidence to support the trust, although subsequent acts and declara-

* *Finch v. Finch*, 15 Ves. 43.

^b *Taylor v. Taylor*, 1 Atk. 386; *Dyer v. Dyer*, 1 Watk. on Cop. 277.

^f *Holman v. Exton*, Carth. 246.

tions of the child, may be so; but generally speaking, we are to look at what was said and done at the time. In this case, the only evidence shewing what was done at the time, is that of Mr. Addison, who says that Lord Stowell was in the habit of going to the banking-house of Child & Co., when he had surplus money to lay out, and that on such occasions, a conversation of this sort usually occurred, viz., after mentioning that he had some spare money to lay out, he would say, partly as if deliberating to himself, and partly as if speaking to witness, 'What shall I buy? I have some idea of buying the stock in my son's name,' and after hesitating and considering for a short time, he would add, 'Well, I think I will buy it in my son's name,' or he used expressions to that effect. The witness then proves the stock to have been purchased by the directions of Lord Stowell in his son's name; and leaving it to be supposed that the vague language he has described was employed on the several occasions of those purchases, he says it was understood by the bank that the stock was to be held by the son at the entire and absolute disposal of the father. This understanding is not material, as we are to consider what it is of which the facts are evidence; and I am of opinion that the species of deliberation which was manifested by Lord Stowell, and supposing it to have occurred on every occasion of transfer, affords no evidence whatever that he intended his son to be a trustee of the stock. I cannot suppose him to have been ignorant of the legal effect of buying the stock in the name of his son; and it seems much more probable that any hesitation which he evinced was occasioned by a deliberation whether he should or not make an advancement for his son, than by a deliberation whether he should or not make his son a trustee for him, at a time when he had other stock standing in his own name, and in which it does not appear that any convenience could be obtained by making his own son a trustee for him of part of the stock of which he was the owner. As far as acts strictly cotemporaneous appear, there does not appear to be any thing to manifest an intention to make the son a trustee for the father. The circumstance that the son was adult does not appear to me to be material. It is said, that no establishment was in contemplation, and that no necessity or occasion for advancing the son had occurred, but in the relation between parent and child, it does not appear to me that an observation of this kind can have any weight. The parent may judge for himself, when it suits his own convenience, or when it will be best for his son, to secure him any benefit which he voluntarily thinks fit to bestow upon him; and it does not follow that because the reason for doing it is not known, there was no intention to advance at all. But then it is said that the powers of attorney, which enabled the father or the father's banker to receive the dividends, though not strictly cotemporaneous, followed so soon upon the transfers, as to shew that they were part of the same transaction. In none of the cases

does it appear that Mr. Scott knew of the transfers at the time when they were made; in two of the cases it does not appear that he knew of the transfers until the times when he executed the powers of attorney; but in one of the cases he had attended at the bank, and himself received the dividend warrant, and consequently knew of the transfer before he executed the power of attorney; he then permitted his father, who was present, to deal with the dividend as he pleased. These circumstances are not conclusive, but they appear to me to make it probable, that at the time when the transfers were made, Lord Stowell intended that the dividends should be received by himself. Whenever that intention was formed, Mr. Scott acquiesced in it. But supposing that the demand of the powers of attorney afford evidence of Lord Stowell's intention at the times of the several transfers, I am of opinion that it cannot thence be deduced that Lord Stowell, at the same times, intended his son to be a mere trustee for him. Consider the situation in which they stood,—the son unmarried, living in the house of his father, and wholly maintained by him, having future expectations from another source, but no present maintenance except from his father, and having very great future expectations from his father's large property; and then consider what the father could mean by transferring sums of stock into the name of his son, with an intention to receive the dividends himself. It is clear that he meant to continue to maintain his son; it is probable that if he had meant only a contingent provision in the event of the son surviving him, he would have made a transfer into the joint names of himself and his son, for this would have given the absolute power over the stock to the survivor; if he had intended, notwithstanding the transfer to the son, to retain the absolute dominion in himself; it is probable he would have taken care to extend the power so as to enable himself to sell and transfer; but it is scarcely to be conceived why he should make any transfer at all, if he intended the son to have neither any present interest in the stock, nor any power over it, nor any future benefit of any kind from it. It seems to me to be, if not a necessary, yet an extremely probable inference from the circumstances, that the father intended to make the son, to the extent of these transfers, secure for the future; but at the same time intended to make the son, for the present, dependent upon himself for his support; that although he adopted a mode of proceeding which gave power to the son to revoke the letters of attorney, and sell the stock, yet he relied, and reasonably, upon his own parental influence, upon the habitual deference of his son, and upon the conformity to his own will which he might expect, in a son who had so much to expect from him, that no improper advantage would be taken of the power which the son obtained by the transfer; and so, in fact, they went on; the son was maintained by the father, who continued to receive the dividends, and his Lordship decided that the usual presumption arose." *Sidmouth v. Sidmouth*, 2 Bea. 447.

husband and wife were living apart by mutual consent, under a deed of separation. It appeared that the grandmother, by whom the children were supported, would cease to maintain them, if the mother were allowed access. There were other circumstances affecting the conduct of the mother. The application was refused.

"In the other case, *In re Taylor*, a wife had left her home, imputing adultery to her husband: before the passing of the act, the husband went to reside in France with his children. The wife instituted a suit for the restitution of conjugal rights, and that suit was still pending. A petition was presented to the Lord Chancellor by the wife, praying that such of the children as were under the age of seven might be delivered to and remain with her up to that age, and that she might have free access to the others, under such regulations as the Court should think just. The wife, at the suggestion of the Vice Chancellor, wrote a letter, retracting the charge of adultery.

"The Vice Chancellor, Sir L. Shadwell, observed, that the mother would have access to her children if a restitution of conjugal rights should be decreed in the suit which was still pending; that decree of itself inferring access to the children. His Honor doubted very much whether the act was meant to be applicable to a case where the husband, *bonâ fide*, before the presentation of any petition by the wife, had removed his children to a foreign country. It seemed to him rather to be inferred from the act, that, as far as the husband and the children were concerned, their residence was to remain the same. Before making an order, directing a mode of access, the Court ought to be reasonably sure that it could carry its sentence into execution; but how, in this case, could it make its order effectual? Upon this ground, and because the suit was still pending in the Ecclesiastical Court, the petition was ordered to stand over, with liberty to apply.

"A question having been raised as to the power of the Vice Chancellor (who is not mentioned in the act) to hear the petition, his Honor decided, that, under the act of 1813, (53 G. 3, c. 24), by which his office was created, he had jurisdiction in the matter; also intimated an opinion, that, in any gross case, a power was given by the act, on the ground of necessity, to make an order of access *ex parte*. Service of the petition on the solicitors of the husband, or at his counting-house or country-house, was ordered to be deemed good service.

"In the course of the argument, it was insisted, on the part of the father, that the legislature had considered, that infants, on whom no property was settled, and who could not therefore be wards of Court, were nevertheless fit objects for its care and protection; that the act leaves the legal right of the father exactly where it found it; that the act applies equally to all infants, whether wards of Court or not, and yet does not require, or even enable, the Court to do any thing in the case of wards, which it might not equally have done before;

that the jurisdiction existed before within narrower limits, but the principles on which it was exercised were equally applicable to other cases; and now that the jurisdiction was enlarged, there could be no change of the principles.

"On the other side it was contended that the intention of the legislature was to create a right in the mother, to which the Court should give effect in all cases of separation between husband and wife, where the wife had not been guilty of criminal conduct; that this new right must be enforced equally in the case of children who are, and children who are not, wards of Court; and that the contrary construction almost contradicts the preamble, by denying that it has made any alteration in the law relating to the custody of infants."

Mr. Macpherson's industry may be appreciated by the following example of the research he has made into the publications of the Record Commissioners,—a source which an ordinary author would probably not have consulted on such a subject.

"Among the ancient bills in Chancery, prefixed to Vol. I. of the Calendar of Proceedings in Chancery during the reign of Queen Elizabeth, published by the Record Commission, may be found at p. 1, a complaint, (A. D. 1392) by Thomas, Duke of Gloucester, that he has been ousted of the possession of certain lands, the custody of which had been committed to him by the King, as guardian in chivalry. At p. 15, (about A. D. 1422), the committee of a city orphan complains that the infant, having affianced himself to the daughter of the plaintiff, has been drawn away by his own mother, and is detained with a view to marry him to another person, and prays that the infant may be produced. At p. 31, (temp. Hen. 6.), a man complains that W. A. broke into his house at midnight and took away Anne, his daughter, and one of his heirs, being within the age of twelve years and in his ward, whose marriage of right to him pertained, and wedded her against the will of him, her father, and all her friends, thereby preventing the plaintiff from having the profit and avail of her marriage, for which he might have had two hundred marks in money. At p. 86, (3 Edw. 4), it appears that two infant wards of the King being detained by Sir James Haryngton and Sir John Hudeleston, the detainers were committed to the Fleet by the Chancellor, by advice of the justices, sergeants at law, the attorney, and others of *consilio domini regis* in the Exchequer Chamber. All these cases are prior to the establishment of the Court of Wards and Liveries. No inference can be drawn from the irregular proceedings of ancient times, when grievances of every kind were pressed upon the Chancellor's attention. In the reign of Queen Elizabeth, (Calendar, vol. 1. p. 405), we find the case of *Higson v. Worlache*, in which a message, cottage, and land, late the estate of N. R., deceased, had upon his death descended to R. R., his son, a minor; and the

plaintiff filed a bill, claiming to be his guardian as uncle by the mother's side. In the case of *Huberd v. Perle*, (Id. p. 417), the wardship of an infant was claimed in respect of two closes of land held of the plaintiff by knight's service. There are also several bills against guardians in socage or by custom, for an account of issues and profits. See *Wulford v. Mott*, A. D. 1590, (Id. p. 293); *Sharp v. Tull*, A. D. 1586, (Id. p. 96); *Sewell v. Barrett*, A. D. 1594, (Id. p. 89)."

TRUTH A SUFFICIENT DEFENCE FOR LIBEL.

To the Editor of the Legal Observer.

Sir,

I OBSERVE, from some extracts in your publication taken from the Report of the Criminal Law Commissioners, that these gentlemen have adopted the old errors which have long rendered this branch of the law ridiculous. No reason can be advanced that will bear scrutiny for supporting a system which declares the truth or falsity of a publication to be a matter of indifference. The mere statement of the proposition carries with it its own refutation. The preservation of the public peace was a reason originally assigned by knaves that they might walk scatheless under the shield of an indictment. The fallacy of the argument which is always enlisted in support of the present state of the law is palpable. If every act which had an indirect tendency to create a breach of the peace were to be restricted, society would be reduced to a dead point—a man would be subjected to an indictment for uttering sarcasm; yet the law suffers one to call another a rogue and a liar with impunity, provided no damage result from the politeness.

Judging from the apparent gravity with which this subject has always been handled, one would conclude that this personage called the "Peace" was a Pagod; that if toppled from his pedestal, would bring the world about our ears, and produce chaos again; when it is a notorious fact, that he is knocked down a thousand times a day, and set up again by the police magistrates on the morrow, to be knocked down again a thousand times before night, with no other result than an amercement of five shillings, and a hearty cuffing to a host of vagabonds who richly merit it.

I would ask, with confidence, if the consumption of spirituous liquors does not produce more breaches of the peace than all the other causes of riot put together? yet no one has ever suggested a prohibition against the sale of gin. It is impossible to deny, that ardent spirits in a cask are in themselves much more powerful indirect eadeavours to excite a breach of the peace, than a printed description of the misdoings of a rascal—they only wait to be drank, and the row is inevitable from some quarter. But then it may be said, that the benefits that spring from the sale of spirits more than countervail any evils that flow from it. Admitting this, the same

may be said of a libel, but with more truth. No benefits whatever accrue to the gin-drinking community; but an immense load of evil, physical and mental. The truth is, we are so wedded to our legal absurdities—their subtleties, refinements, and wire-drawn distinctions, become so palatable when once imbibed, that it is deemed a sacrilege to remove a stone of the moss-grown edifice. The universe is replete with causes that tend to a fracture of the peace. Why not cut the tongues out of the ladies who traffic at Billingsgate? They would transact their affairs effectively without this provoking member, and their husbands would be much happier.

Let every man publish what he pleases of his neighbour, and let him be punished if it be untrue, and may be injurious; and confine the question to twelve men in a box, taking all power from the Judge, except to sum up the evidence. The peace of our Lady the Queen, her crown and dignity, would be as palmy as ever, and society would be benefitted by the exposure of rogues. A SUBSCRIBER.

[We insert this letter, but cannot concur in the writer's opinions. Ed.]

SELECTIONS FROM CORRESPONDENCE.

SEARCHING FOR JUDGMENTS.

Sir,

In the review of the late statutes relating to judgments, at p. 258, *ante*, a material point as regards notice should be adverted to; namely, that the 2 Vic. c. 11, protects purchasers without notice against judgments, although registered in pursuance and according to the provisions of the late statute on the subject, the old law as to this being still in force, as stated by Sir Edward Sugden in his elaborate work on Vendors and Purchasers. LECTOR.

I have read the paper (p. 258) on searches for judgments after 1st August, 1841. May I ask whether the stat. 3 & 4 Vict. c. 82, s. 2, applies to stat. 2 & 3 Vict. c. 11, s. 2?

ZENAS.

[The 3 & 4 Vict. c. 82, recites only the 1 & 2 Vict. c. 110, and the 1st section defines and extends the provisions of the recited act. The 2d section we have quoted, p. 259, *ante*.—Ed.]

LOCAL AND PERSONAL ACTS,

DECLARED PUBLIC AND TO BE JUDICIALLY
NOTICED.

4 & 5 Vict.

[Continued from p. 300, *ante*.]

95. An act for regulating legal proceedings by or against "The Hull flax and cotton mill company."

96. An act to enable the "Scottish Marine Insurance Company" to sue and be sued; and for other purposes.

97. An act for further and more effectually repairing and maintaining certain turnpike roads in the counties of Roxburgh and Dumfriesshire.

98. An act for more effectually widening and improving the road from Wells to Highbridge, with a road thereout to Cheddar, all in the county of Somerset.

99. An act for more effectually repairing and maintaining several roads leading to and from the town of Lradford, in the county of Wilts, and for maintaining a bridge over the river Avon at Stokeford in the said county.

100. An act for repairing the roads leading from Henley-upon-Thames to Culham bridge, and to the Chancellor's milestone near Magdalen bridge in the county of Oxford.

101. An act for repairing the road from Blakedown pool in the parish of Hagley in the county of Worcester into the borough of Birmingham in the county of Warwick.

102. An act for repairing the turnpike road from Barnstable to Braunton, in the county of Devon, and for making certain new lines of road to communicate with the same.

103. An act for repairing and improving the roads commonly called the Sedgley roads, in the county of Stafford, and for making a new line of road connected therewith in the said county.

104. An act for repairing the road from Dewsbury to Leeds in the West Riding of the county of York, and for making and repairing a new line of road leading therefrom.

105. An act to amend an act passed in the eleventh year of the reign of King George the Fourth, for repairing and improving the road from Brighton to Shoreham and Lancing in the county of Sussex, and for other purposes connected therewith.

106. An act for repairing and improving the road from Selby to Leeds in the West Riding of the county of York.

107. An act for repairing, improving, and maintaining the road from a place in the parish of Nuffield, in the county of Oxford, through Wallingford and Wantage, to Farringdon, in the county of Berks.

108. An act for more effectually repairing, maintaining, and improving certain roads leading to and from the city of Lincoln.

109. An act for repairing the turnpike road from Tinsley to Doncaster, and for making certain new lines of road to communicate with the same, all in the West Riding of the county of York.

110. An act for making and maintaining a turnpike road from Cripps Corner, in the parish of Bwhurst, in the county of Sussex, to Gills Green, in the parish of Hawkhurst, in the county of Kent.

111. An act for repairing and maintaining the road from the Mayor's Stone in Abingdon, to Chilton Pond, in the county of Berks.

112. An act for improving the streets and public places, and erecting a town hall, and improving the markets, in the township of Blackburn, in the county palatine of Lancaster.

113. An act for the better drainage of Lands in Bourn North Fen and Dyke Fen, in the manor and parish of Bourn, in the county of Lincoln.

114. An act for maintaining and repairing, as turnpike, a certain road, commencing at or near the north-west gate of the Woodside hotel stable-yard, in the township or chapelry of Birkenhead, and terminating at or near the cottage of Henry Berry, in the township of Little Meols, in the parish of West Kirby, in the county of Chester, and for levying tolls for that purpose.

PRIVATE ACTS.

PRINTED BY THE QUEEN'S PRINTER,
AND WHEREOF THE PRINTED COPIES MAY BE
GIVEN IN EVIDENCE.

1. An act for inclosing lands in the parish of Barnack with Pilsgate and Southorpe, in the county of Northampton.

2. An act for inclosing lands in the parish of Collyweston, and within the precincts of West Hay, in the county of Northampton.

3. An act for inclosing lands in the manor of Eccleshill, in the parish of Bradford, in the West Riding of the county of York.

4. An act for inclosing lands in the parish of Bury, in the county of Sussex.

5. An act for inclosing lands in the parish of Eccleshall, in the county of Stafford.

6. An act for inclosing lands in the parish of Gamlingay, in the county of Cambridge.

7. An act for inclosing lands in the manor of Waningore, in the county of Sussex.

8. An act for inclosing lands in the parish of Uplyme, in the county of Devon.

9. An act for the division of the rectory of Winwick, in the county palatine of Lancaster.

10. An act for inclosing lands in the parish of Bedingham, in the county Norfolk.

11. An act for inclosing lands in the parish of Upper Heyford, in the county of Oxford.

12. An act for inclosing lands in the parish of Cheveley, in the county of Cambridge.

13. An act to amend an act of the last session of parliament for inclosing lands in the parishes of Whittlesea Saint Mary and Whittlesea Saint Andrew, in the county of Cambridge.

14. An act for inclosing lands in the parish of Marsh Gibbon, in the county of Buckingham.

15. An act for dividing, allotting, and inclosing lands in the parish of Elsing, in the county of Norfolk.

16. An act for inclosing the commons, droves, banks, and waste lands, in the parishes of Leverington, Tid Saint Giles, and Outwell, in the Isle of Ely, in the county of Cambridge.

17. An act for inclosing lands in the manor and tithing of Olveston, within the parish of Olveston, in the county of Gloucester.

18. An act for inclosing the commons and waste lands in the township and manor of Brimington, in the county of Derby.

19. An act for dividing, allotting, and inclosing

closing the commons and waste lands lying within the hamlet of Coundon, in the county of Warwick, and the hamlet of Keresley, in the county of Warwick, and county of the city of Coventry, or one of them.

20. An act for inclosing lands in the parish of Whitmore, in the county of Stafford.

21. An act for inclosing and improving lands in the parishes of Saint Helen and Saint Nicholas, Abingdon, in the county of Berks.

22. An act for inclosing lands in the parish of Great Horwood, in the county of Buckingham.

23. An act for setting out and allotting certain portions of the lands in Whaddon Chase, in the county of Buckingham, in lieu of the common rights upon the said chase, and for extinguishing such common rights.

24. An act for severing the chapelry of Rowley Regis, from the vicarage of Clent, in the county of Stafford; and for the sale of certain lands situate in the parish of Rowley Regis, and belonging to the vicarage of Clent, with the chapelry of Rowley Regis annexed, and thereby providing a residence and maintenance for the curate or officiating minister of Rowley Regis, and for other purposes.

25. An act to empower the dean and chapter of Westminster to grant building leases in certain parts of the city of Westminster, and for other purposes.

26. An act to confirm to Sir Edward Bowyer Smyth, Bart., the advowson of district churches within the parish of Saint Giles, Camberwell, in the county of Surrey.

27. An act for vesting certain real estate, devised by the will of Thomas Whittaker, Esquire, deceased, in trustees, upon trust to be sold, and for laying out the money arising therefrom in the purchase of other estates, to be settled to the same uses.

28. An act for extending the powers of the trustees under the settlement on the marriage of the Reverend James Jackson with Miss Eliza Houlton.

29. An act for empowering the trustees of Henry Bickerton Whitehouse and Mary his wife, and of the children of the said Mary Whitehouse, to ease or sell the mines and minerals in and under, and to lease part of the surface of a certain freehold estate called the Hill Top Farm, situate in the parish of Westwrothwich, in the county of Stafford, and also to sell the estate.

30. An Act for vesting the lands and barony of Lundin, and the lands of Aithernie, and certain other heritages, in favour of James Erskine Wemyss, Esquire, and his heirs and assigns, in fee simple, on condition of certain parts of the lands and barony of Methill, and other lands, being settled in lieu thereof in fee tail.

[To be continued.]

SUPERIOR COURTS.

Lord Chancellor's Court.

CUSTOM OF A MANOR.—RIGHT OF THE LORD TO WORK MINES TO THE DESTRUCTION OF THE SURFACE — PRINCIPLES ON WHICH THE COURT WILL INTERFERE.

A leasee of mines under the Crown in the Duchy of Lancaster, digs and takes away minerals to the destruction of the surface, and of the houses thereon belonging to a copyholder of inheritance of the manor; the Court, in the conflict of authorities as to the custom, and before the copyholder establishes a legal right, refuses an injunction, considering that greater injury would be thereby done to the leasee of the mines than could be done to the copyholder by the works, he being entitled to compensation for damages.

This was an appeal motion from an order of the Master of the Rolls, refusing an injunction to restrain the defendant from carrying on his mining operations in Union Street, in Hasley, in the manor of Newcastle-under-Lyne, in such a manner as to injure or endanger the stability of the plaintiff's houses situated in that street. The facts, and the important question of law arising upon them, are comprised in the following summary of his Lordship's judgment, which, after taking time for consideration, he pronounced on the 14th of June. His Lordship said that the right relied upon by both parties were legal rights, and the plaintiff coming to this Court for the protection of the rights he claimed, was bound to shew that those rights had been established, or the necessity of the Court's interference to prevent immediate or irremediable mischief. But it was alleged, on his behalf, that he had no opportunity of establishing his rights at law. The question therefore, was, what was the result of the evidence produced to this Court as to the right claimed, and as to the extent of the alleged injury and damage to the plaintiff's property? It appeared that the Queen was lady of the manor of Newcastle-under-Lyne, in right of the Duchy of Lancaster. Leases of the mines had been granted, distinctly from the surface, from a very early period, and the leasees had from time to time obtained from them coal and some ironstone. The plaintiff's two houses were built in 1797, in the immediate neighbourhood of several shafts, from which witnesses had deposed that coal had been then obtained. At that time the Marquis of Stafford, the father of the defendant, was leasee of the mines. In 1803, the defendant became entitled to the then existing lease, and renewed leases of the mines had been since granted to him, under which the mines had been constantly worked. The instructions to the miners were, to clear all out. In the progress of the works, damage was done, or expected to be done, to the surface of the land; and in 1826, some of the copyholders made representations upon the subject, but their em-

deavours to effect an alteration in the manner of working the mines were not successful. The minerals were in alternate strata, the veins of ironstone being sometimes above, sometimes below, and sometimes between the coal, but wherever the ironstone was found, it was always obtained. The defendant's mining agent proposed in 1832, to get the ironstone in larger quantities, and afterwards there was an increased demand for it, and in consequence a memorial was presented by several of the copyholders of the manor to the defendant. It did not appear that at that time any question was raised against the right of the defendant to work the mines under houses; but a claim was made for compensation for damage thereby occasioned to the copyholders, owners of the houses. The defendant denied his liability, and no attempt was made to enforce the claim. Ironstone was afterwards sought for the purpose of smelting it, and since 1832, it had been got in very large quantities. Attempts had been made to shew a distinction between the right of the defendant to work the mines for coals and for ironstone, but from the evidence, no difference had appeared, and the defendant had as much right to work for one as for the other. In 1839, the defendant caused a new level to be made, running under three streets in Hanley: Queen Street, Union Street, and Wood Street, for the purpose of working the ironstone, by which it was alleged much damage had been done to several houses. It did not appear that all the houses, under which the mining had been carried on, were injured. Extending the mining did not necessarily extend the injury to houses, but it was not denied that many houses had been considerably damaged, and, although the plaintiff's houses were sound, it seemed probable they would be damaged. The defendant insisted upon a right to work the mines in the manner most advantageous to himself, even to the destruction of the houses, and it was contended that his lease from the Crown and the custom of the manor authorised him so to do; that the grantee of a copyhold could not interfere with his right, and that he was not bound to make compensation; and it was added, that he had always been, and was, desirous to afford the opportunity of a fair trial at law of the question. The claim the plaintiff had stated was more extensive than the relief he prayed for, and it was not, in the argument, denied that the defendant had a right to work the mines for the minerals, but it was alleged that the way in which they had been worked was improper. From the evidence he found no reason to say that the defendant had not a right to work the mines, and it must be admitted that the plaintiff's houses might thereby be damaged. The question whether the defendant was liable to make compensation for any damage to them, could not be determined here. Upon that question whether the defendant was entitled to work the mines, and thereby to do damage to the houses of the plaintiff without compensation, he would give no opinion; but it appeared to him that that was the most favourable view of considering the plaintiff's

case, and in that view he ought not to grant the motion for the injunction, but must leave the plaintiff to his legal remedy if damage to his houses was so done. The question was not whether the defendant had a right to work the mines, but whether, working the mines, he was bound to make compensation for any damages which the plaintiff's houses might in consequence sustain. The plaintiff and several other persons complaining of the danger, and many, of the actual injury to their houses, were all copyhold tenants of the manor. He should not notice the complaint of combination among them, but suggested that as all had the same solicitor, some arrangement might be come to between them to try the right they claimed at once, to which the defendant would give every facility. He would not give any costs in refusing the motion.

Mr. Wigram, Mr. Bethell, and Mr. Hardy, for the plaintiff, in support of the appeal motion. There was a wide distinction between the rights of a copyhold tenant of inheritance, such as the plaintiff was, and a mere lessee, as the defendant, of the lady of the manor. About 77 out of 150 houses in the three principal streets of Hanley were endangered, and some shaken and damaged, and two fallen down by the operations of the defendant's agents. The danger and damage were sworn to, and were not denied by the defendant. On the contrary, the argument of his counsel, went to the extent that he might work the mines to the destruction of the houses, if necessary. The plaintiff asked the Court to stay irreparable mischief until he could have an opportunity of establishing his right at law against the arbitrary custom asserted and exercised by the defendant. They cited among other cases, *Wilkes v. Broadbent*,^a *Bourne v. Taylor*,^b and some of the cases there referred to; *Badger v. Ford*,^c *Arlett v. Ellis*,^d and several of the cases referred to in the report of that case; and *Harris v. Riding*,^e in which it was held that even the owner of the fee, with the most comprehensive reservation of the right to dig for and take away mines, minerals, and metals, was not entitled to take away any mines but such as could be taken, leaving a reasonable support to the surface.

Mr. K. Bruce, Mr. Turner, and Mr. Purcell, for the defendant, opposed the motion. The separation of the right to work these mines from the ownership of the surface was established so long ago as the reign of Richard II. The defendant had only worked the mines, according to the custom of the manor, and he had worked them for the last three years, as he does now, without any complaint, until this motion was made a few days ago. That acquiescence was a sufficient answer to this application. Shafts were down, and pits open at Hanley before any of the houses of the com-

^a 1 Wilson, 63; S. C. Stra. 1224.

^b 10 East, 189.

^c 3 Barn. & Ald. 153.

^d 7 Barn. & Cress. 346.

^e 6 Mees. & Wels. 60.

mines were built; if the owners of the soil use to erect buildings, under these circumstances they had to blame themselves for the consequences. Whatever rights the defendant had under the custom, his agents abstained from all improper or careless workings of the mines. The defendant's advisers were anxious, and repeatedly offered to try his right at law, and for that purpose they were ready to admit that the operations were dangerous to the use, and actually damaged them.

The Lord Chancellor said the case presented one of the greatest difficulties that he remembered in his experience as to the application of the jurisdiction of this Court. The motion was founded on the well-known principle that the Court would always interfere to preserve property until there was a decision of the legal rights of the litigating parties. In the present case there was incontestible evidence that the property of the plaintiff was in danger, and might be utterly destroyed by the defendant's operations; but then, even if so destroyed, still the injury was one for which the plaintiff might have compensation in damages. The case, nevertheless, came within the principle of those cases in which it was alleged, as the ground for an injunction, that the act complained of would destroy the property. In order, however, to lay a good ground for the interference of the Court, the plaintiff must show a strong *prima facie* case of title, and he must also shew that he had not been guilty of any unreasonable delay in applying for the protection of the Court, or of any acquiescence in the rights of the defendant, which would have the effect of depriving him of the protection of a Court of Equity. After adverting to the custom of the manor, his Lordship observed that he found in the evidence before him, a long continued custom of working the mines in the manor, without any regard to the preservation of the surface. He also found that in a case in which a question of the same description was raised, the lord of the manor set out in his plea right to work the mine even to the destruction of the surface, if he gave compensation; and that a jury found in favour of this plea, founded on the custom, and gave a verdict for the defendant in the action. It appeared, also, that it remained a subject of discussion what judgment was to be entered upon the verdict in that action. The custom of the manor was, therefore established, and a verdict had in a court of law in favour of the right of the lord of the manor, to do that which he claimed a right to do. The question then to be determined, was whether under such circumstances, the Court was to interfere by way of injunction; and, that too when it appeared that as far back as the year 1839 the plaintiff had notice that the level of the mine was approaching his premises. The Court, in such a state of circumstances, was to strike a balance between the mischief that might be done to the plaintiff by the prosecution of the works, and the mischief that might be done to the defendant by compelling him to stop the operations of the mines. In his lordship's opinion, the

mischief that would be done to the defendants very far exceeded the mischief that might be done to the plaintiff, and for which mischief he was entitled to compensation. His lordship, therefore, thought he should best meet the justice of the case, by directing the plaintiff to bring an action to try the right of the defendant at the next assizes for the county of Stafford. The motion for the present to stand over until the result of that trial was known.

On a subsequent day, the case was mentioned, for the purpose of settling the form of action, and then the counsel for the defendant agreed to admit on the trial that the defendant's mining operations were carried on so near to the plaintiff's houses as to do them injury, and endanger their stability.

Hilton v. Earl Granville, at Lincoln's Inn, June 16, 18 and 21st, 1841.

Rolls.

CONSTRUCTION OF WILL.—LEGATEES TAKING PER CAPITA.

A bequest of residue between several legatees, with words appended denoting a tenancy in common, although ordinarily construed into a gift per capita, may be controlled by the general context of the will, so as to allow certain of the legatees to take only per stirpes.

The bill in this case was filed by three of the children of a deceased nephew of the testatrix in the pleadings named, and prayed for a declaration of the rights of the parties, and the usual accounts. The testatrix by her will gave all the residue of her property unto and between her sister, the wife of Richard Bodington, her niece, the wife of John Bodington, the children of her deceased nephew, William Brett, and her niece Anne, the wife of John Jones, and to their respective heirs, executors, and administrators, in equal shares and proportions as tenants in common, and directed that the shares of the children of her said nephew should be paid to such of them as should attain twenty-one, when and so soon as the youngest of such children should attain that age. The plaintiffs contended that all the legatees took *per capita*, and, there being four of the deceased nephew's children, that each legatee took one-seventh of the residue, whereas the defendants insisted that the testatrix intended all to take *per stirpes*, so that only one-fourth was divisible amongst the children of the deceased nephew.

Kindersley and Elderton, for the plaintiffs, urged that the general words "unto and equally between, &c." could not be satisfied without a division of the residue *per capita*, and the postponement of the distribution of the shares belonging to the children of the nephew until the youngest should attain twenty-one, clearly shewed that the testatrix contemplated such a division. They cited *Butler v. Stratton*, 3 Bro. C. C. 367; *Blackler v. Webb*, 2 P. Wms. 383.

Pemberton, *contra*, said that the general words relied upon on the part of the plaintiffs

might be controlled by particular circumstances, showing an intention on the part of the testatrix to convey a different meaning; and in this case such an intention was apparent, for all the children being living, and the father dead, she might have described them *nominatim*, had she intended them to take *per capita*; but, instead of doing so, she had described them as a class, thus clearly indicating her wish that they should only take a share amongst them.

The Master of the Rolls said the general words relied upon in the arguments for the plaintiffs were not so imperative but that they might be controlled by express directions in other parts of the will. The testatrix, after providing for her debts, began by dividing the residue of her property into four equal parts, and one of these parts she gave to such of the children of her late nephew, William Brett, as should attain the age of twenty-one. Now, by treating them as a class, his Lordship said he should be giving effect to the whole will, and he thought that was the proper construction.

Brett v. Horton, July 20th and 22d, 1841.

Queen's Bench Practice Court.

DEPOSIT OF MONEY IN LIEU OF BAIL.— SEIZURE IN EXECUTION.

Where money has been deposited in Court in lieu of bail in one action, it cannot, after bail has been perfected, be seized in execution in another action, under the 12th section of the 1 & 2 Vict. c. 110.

Slade had obtained a rule calling upon the defendant in two actions of *France v. Campbell*, and *Winter v. Campbell*, to shew cause why a sum of 220*l.*, paid into Court in lieu of bail under the statutes 43 Geo. 3, c. 46, s. 2, and 7 & 8 Geo. 4, c. 71, s. 2, in the second-named action, should not be paid over to the sheriffs of London, in part satisfaction of an execution in the first-named action. It appeared that a judgment for the sum of 586*l.* had been obtained against the defendant by the plaintiff France, in respect of which a writ of *fi. fa.* was issued, directed to the sheriffs of London. A return of *nulla bona* was made, but subsequently the defendant was arrested at the suit of the plaintiff Winter, and he then deposited 20*l.*, and 20*l.* for costs, in Court, in lieu of bail. Bail had since been perfected, but the money had not yet been paid over to the defendant, and the object of the present application was that it should be handed over to the sheriffs in part satisfaction of France's demand.

R. V. Lee shewed cause. It had been long ago decided that money in the hands of the sheriff, for the purposes of one action, could not be applied by him in satisfaction of a demand in another. *Armistead v. Philpot*, Doug. 231; *Fieldhouse v. Croft*, 4 East, 510; *Knight v. Criddle*, 9 East, 48; and the present case must be taken to be analogous to that. The present application was sought to be supported upon the 12th sec. of the 1 & 2 Vict. c. 110, which provided that a sheriff, by virtue of a writ of *fi. fa.*, might seize money or bank notes in

satisfaction of the writ; but that did not authorize the seizure of money in the hands of a third party, whose character was that of a trustee only.

Slade, contra.—The principle upon which the cases which had been cited, had been decided was, that money could not be seized, but that was a difficulty which in this case had been removed by the stat. 1 & 2 Vict. c. 110, s. 12. There was in truth no distinction to be drawn between money in the hands of the sheriff and money in the hands of the master, and the plaintiff Winter was therefore clearly entitled to succeed in this motion, in opposition to the technical objection raised by the defendant.

Wightman, J.—In the case of *Robinson v. Pearce*, 7 Dowl. P. C. 93, the defendant having contracted for the sale of some property, the purchase-money was deposited by the vendee in the hands of a third party for the use of the defendant, and it was held by *Perke, B.*, that this money could not be attached under the 12th and 14th sects. of the 1 & 2 Vict. c. 110. I think, therefore, that the present case is not within the 12th sect., and that the rule must be discharged.

Rule discharged.—*Winter v. Campbell*, E. T. 1841. Q. B. P. C.

SERVICE IN EJECTMENT UPON FOREIGN TENANT.

Where the tenant in possession of the premises sought to be recovered is a foreigner, and does not understand English, the object of the declaration and notice may be explained through the medium of an interpreter.

Lusk moved for judgment against the casual ejector. The tenant in possession was one Pico, a Spaniard, who did not understand English. The deponent, who served the copy of the declaration and notice, explained the meaning of the contents of those papers through the medium of a female servant of the tenant, who acted as interpreter. The tenant, however, refused to receive the declaration, and it was left on a chair near him.

Wightman, J., granted a rule absolute. Rule absolute.—*Doe d. Cuttall v. Roe*, E. T. 1841. Q. B. P. C.

JUDGMENT FOR WANT OF A PLEA.—WHEN SIGNED.

Where there is any doubt of the due service of notice of declaration upon the defendant, the Court will not relieve the plaintiff from the responsibility of signing judgment for want of a plea, by making an order that judgment be signed, but will leave him to take his own course.

Warren moved for leave to sign judgment for want of a plea. The plaintiff had entered an appearance for the defendant after personal service of the writ of summons, but there was some

doubt whether the notice of declaration had been properly given. Various circumstances were stated, to shew that the defendant had received notice, and it was urged that the Court would sanction the signing judgment.

Wightman, J.—It is quite unusual to make such an application to the Court. The plaintiff must sign judgment at his own peril.

Rule refused.—*Spriggins v. White*, E. T. 1841. Q. B. P. C.

DESCRIPTION OF ATTORNEY.—JUDICIAL NOTICE.

The attorney indorsed his name on the writ of summons as of "No. 1, Featherstone Buildings, Holborn, in the County of Surrey." Upon an application to set aside service of the writ, the Court refused to take judicial notice of the fact, that the street named was not in the county of Surrey.

Heaton moved to set aside the service of the writ of summons in this action for irregularity. The plaintiff's attorney had indorsed his name on the writ, and described himself as of "No. 1, Featherstone Buildings, Holborn, in the county of Surrey." It was urged, that it was notorious that the place and street described were in Middlesex, and not in Surrey, and that the indorsement was not in accordance with the provisions of the 2 W. 4, c. 39, s. 12. No affidavit was produced that there was no Featherstone Buildings in Surrey.

Wightman, J.—I cannot take judicial notice of the fact that there is no Featherstone Buildings in Surrey.

Rule refused.—*Humphreys v. Budd*, E. T. 1841. Q. B. P. C.

RULE TO SET ASIDE INTERLOCUTORY JUDGMENT.—STAY OF PROCEEDINGS.

Where a rule nisi to set aside interlocutory judgment, with a stay of proceedings, had been obtained, the Court refused to make a rule to compute on that judgment absolute.

Hoggins had obtained a rule nisi to set aside the interlocutory judgment signed for want of a plea, with a stay of proceedings, upon an affidavit that a plea had been delivered before judgment signed.

C. C. Jones moved to make absolute a rule to compute in the same cause.

Wightman, J.—The rule absolute to compute cannot be granted; as a rule to set aside the judgment, with a stay of proceedings, is pending.

Rule refused.—*Anderson v. Southern*, E. T. 1841. Q. B. P. C.

SERVICE IN EJECTMENT.—ERROR IN NOTICE.

The notice at the foot of the declaration in ejectment served upon the tenant required him to appear in the "Common Bench."

The declaration being rightly entitled in the Queen's Bench, the Court granted a

rule nisi for judgment against the casual ejector.

Tyrchitt moved for judgment against the casual ejector. The declaration was rightly entitled in the Queen's Bench, but the notice required the tenant to appear in "Her Majesty's Court of Common Bench." It was submitted that, as the proceedings were in all other respects correct, this mistake was immaterial.

Wightman, J.—Take a rule nisi.

Rule nisi accordingly.—*Doe d. Evans v. Roe*, E. T. 1841. Q. B. P. C.

Exchequer.

AFFIDAVIT.—JURAT.—COMMISSIONER.

Where an affidavit is sworn in the country before a commissioner, it is not sufficient to state after the commissioner's name, "a commissioner, &c." even although the affidavit be sworn in a cause, and entitled in this Court.

Gile objected to certain affidavits being read to shew cause against a rule (obtained by the plaintiff's late attorney to rescind a judge's order for the delivery of his bill of costs) on the ground that the commissioner before whom the affidavits had been sworn did not, at the foot of the jurat, state that he was a commissioner of this Court. On which the Court called on

Churnock to support the affidavits, and he contended that the affidavits were strictly regular, and in conformity with the practice of the Court since the stat. 29 Car 2, c. 5, s. 2 (1671), by which commissioners for taking affidavits were authorized to be appointed. He cited *Howard v. Brown*, 4 Bing. 393, by which it was held that an affidavit of debt sworn before a commissioner in the country is insufficient, if it do not state the party before whom it is sworn to be a commissioner; but in this case it was so stated, with the addition of an &c.; so in the case of *Kennett and Avon Canal Company v. Jones*, 7 T. R. 451, it was held to be no objection to an affidavit that it was not entitled in the King's Bench, or that it appeared to have been sworn before A. B, a commissioner, &c., without adding of the Court of King's Bench, if in fact he were a commissioner of that Court. *The King v. Harr*, 13 East, 189, was also cited, in which the Court held that an affidavit not entitled in the King's Bench, though appearing to have been sworn before A. B, a commissioner, &c., without stating him to be a commissioner of this Court, could not be read, but those sworn in Court or before a Judge of the Court, though not entitled in the King's Bench, may be read. Now, in the present case, all the affidavits were entitled in this Court, and, therefore, the &c. after the word "commissioner," must have reference to the Court in which the affidavits were entitled. In *The King v. Harr*, the affidavits were not entitled in the Court, and, therefore, the &c. had no meaning or reference, and it was on that ground and on that ground only, that the affidavits in that case were re-

* *Vide Kelly v. Pillebois*, 8 D. P. C. 136.

jected. The Court has its own Rolls, and can ascertain, on inspection, whether the commissioner who has sworn these affidavits be in fact an officer of this Court; and the Court is not accustomed to presume in favor of a captious objection, that an officer of any of the Courts would act improperly or illegally. This is a question of great importance to the public in general, and the practitioner in particular; and if this objection prevail, it must be by overruling all the prior authorities on the subject, and changing a practice which has prevailed for two centuries:

Abinger, C. B.—We think that this is a very proper objection; and one which the Court must allow. True it is, the affidavits are entitled in this Court, and that the *dc.* follows the word "commissioner," at the foot of the affidavit, yet it is not necessarily true that the party is a commissioner of *this Court*. It is perfectly consistent with the commissioner's subscription, that he may be a commissioner of the Queen's Bench or Common Pleas, and not of this Court. We think parties should not leave such matters in doubt; and it is safer and better to hold that the objection should prevail.

Charnock then applied to enlarge the rule, that the affidavits might be re-sworn; but the Court refused to do so, and made the rule absolute, but without costs, as the objection taken to the affidavits was purely technical.

Tarte v. Barnett, T. T. 1841. Exch.

MISCELLANEA.

INSTANCES OF MENTAL DELUSION.

On the trial of Hatfield, Mr. Erskine, in order to demonstrate how cunning and acute in reasoning insane persons frequently are, and how difficult it is to discover any symptom of delusion, referred to the following case.

An unfortunate gentleman had indicted his brother and the keeper of a mad-house at Hoxton for having imprisoned him as a lunatic, whilst according to his evidence, he was in his right senses, and Mr. Erskine, in defence of the prosecution, was only instructed generally that he was still insane, but not having the clue, the prosecutor, notwithstanding a long and acute cross examination, completely foiled Mr. Erskine in every attempt to expose his infirmity, and after a very long trial the judge and jury considered the prosecutor the victim of a most wanton and barbarous oppression; but fortunately, almost at the instant before a verdict against the defendants, Dr. Sims, who knew the subject of delusion, came into Court, and communicated to Mr. Erskine that the prosecutor believed himself to be the Lord and Saviour of mankind, at the very time he had been triumphing over any attempt to surprise him on the concealment of his disease; upon which Mr. Erskine, affecting to lament the indecency of his examination, begged that the prosecutor's *Christian*

feelings would induce forgiveness, whereupon the prosecutor, with the utmost gravity and emphasis, in the face of the whole Court, ejaculated '*I am the Christ*' and so the cause ended.

Another instance was stated by Lord Mansfield. A Mr. Wood had instituted a similar prosecution, in Middlesex, against Dr. Monro, and the infirmity could not be exposed by the defendant's counsel by the most severe examination, but Dr. Battye having suggested the question, what was become of the princess whom he had corresponded with in cherry juice from a high tower? the prosecutor exposed his malady, by narrating how he carried on such ideal correspondence, upon which Lord Mansfield immediately directed an acquittal. But the prosecutor again indicted Dr. Monro for the imprisonment in London, and being cunning enough to recollect that he failed on the prior occasion by his having narrated his correspondence with the princess, he, on the second trial, absolutely refused any communication on that subject, upon which his evidence at Westminster was proved against him by the short-hand writer, and there was of course a second acquittal.

The late Mr. Chitty, in his *Medical Jurisprudence*, also relates the following instance in his own practice.

A barrister was suddenly, without instructions upon any particular point of mental delusion, retained as counsel to examine a lady alleged to be a lunatic, and who for two hours answered every question with the appearance of excellent sense, high attainments, and accomplishments, and in a manner which denoted her to be perfectly competent to take the best care of her property and herself; but it being suggested, on a slip of paper, that ever since the lady had passed a house, upwards of nine years before, she constantly insisted that a piece of wood was burning in her throat, and had consulted numerous medical gentlemen how to effect a cure, the author interrogated her whether she still experienced that sensation? Upon which she became violently indignant, and appealed to the commissioners for protection, who advised her to answer; and on being assured that the counsel intended no offence, she fully described the supposed fire to be still burning, and stated, that if she put her finger towards the root of her tongue she felt that it was scorched. Upon which the jury instantly found her insane.

THE EDITOR'S LETTER BOX.

The Analytical Digest of all reported cases in all the Courts during the last three months was published this day.

The Letters of a Correspondent at Stockport and T. W., we hope to attend to next week.

The Sheriff of Lancashire will hold his Court at Manchester, on Thursday the 26th, instead of the 19th August.

The Legal Observer.

SATURDAY, AUGUST 21, 1841.

— "Quod magis ad nos
Pertinet, et nescire malum est, agitamus.

HORAT.

THE MEETING OF PARLIAMENT.

PARLIAMENT has now re-assembled, and the first great question to be discussed will be the change of Ministers. With this we have here nothing to do, except so far as any change may affect the interests of the profession. To preserve them inviolate we shall remain watchful—even in the long vacation! We cannot believe, however, that whoever may remain, or come in, much will be done at the present season of the year. It was necessary to settle this great question, that Parliament should meet at this unusual time; but we are quite satisfied that, when once it is settled, there will be a very general disposition to disperse again.

Among the questions which will, however, be brought before Parliament at no distant period, not the least interesting to the profession, will be the modification of the stamp duties, and the establishment of a new board of taxation. We apprehend that public feeling is ripe for a reconsideration of both these subjects. We do not believe that the present scale of stamp duties will long be attempted to be levied. The principles which are adopted in other matters will, in the end, be resorted to in this. The small transactions should be relieved from much of their present burthen. The stamp duty now payable on purchases and mortgages, where only a small sum of money passes, in very many cases, discourages all dealings with land. Now we need hardly say that this is injurious, not only to the public but to the profession. The small purchaser is excluded from the market by the expense, and

of this a very great proportion consists in the stamp duty. The professional gains are almost always cut down by the fairness and good sense of the practitioner to the smallest scale; but even with this deduction the expense is too large, and the effect is to *prevent the dealing altogether*. This injures the revenue quite as much as it does the public and the profession. There must, therefore, be a re-consideration and modification of the stamp duties. Another branch of the same subject is the adoption of a new system of taxation. The length of the instrument should be one of the ingredients in estimating the remuneration; but it should not be the only one. The *value* of the transaction, the responsibility incurred—the labour bestowed—the money which passes,—should surely be taken into consideration. There should be some new rule laid down on this subject applicable to *all* transactions. Whether these should issue from the Judges, or a new Board of Taxation, we leave for further consideration; but the new rule must be laid down; and it is to be remarked, that this very question is now being discussed by the profession in France, and in the recent numbers of the *Journal de Debats*, the organ of the present French ministry, will be found several articles urging the adoption of this rule.

One word more: we trust that in all changes to be made, the fair and reasonable interests of the profession will not be overlooked. We have shewn that these are identified with those of the public; and no ministry can prosper that puts itself in opposition to them.

Y

ATTORNEY'S LIEN ON JUDGMENTS AND DECREES.

IN the present article we propose to state the law as to the lien which an attorney or solicitor has for his costs on judgments and decrees in favour of his client.

First, then, as to the right of an attorney to a lien on a judgment for his costs.

It has always been the practice of the Court of Queen's Bench, previous to 1 Reg. Gen. H. T. 2 W. 4, s. 93, that if two parties obtain judgment the one against the other, and one of them applies to the Court to have his judgment set off against the judgment of the other, the Court will permit him to do so only upon the terms of his satisfying the lien which the attorney of the opposite party has upon the judgment for his costs in that particular suit; see *Mitchell v. Oldfield*, 4 T. R. 123; *Morland v. Hammersley*, 2 H. Bl. 441, n.; *Middleton v. Hill*, 1 M. & Sel. 240; *Randle v. Fuller*, 6 T. R. 456; *Vansandau v. Burt*, 1 D. & R. 168; *Harrison v. Bainbridge*, 2 B. & C. 800; 4 D. & R. 363, S. C.; 5 D. & R. 399; 3 B. & C. 535, S. C.; *Simmons v. Mills*, 8 Taunt. 526. And the same where the rights of the parties arise from separate awards, MS. E. T. 1841; and see Vol. 1, 7th edit. Chitty's Archbold, Book 1, Part 1, ch. 6, s. 6. But the practice was different in the Common Pleas, where the attorney's lien for costs was held to be subject to the equitable claims that existed between the parties in the cause; *Bridges v. Smith*, 1 Dowl. 242; 8 Bing. 29; 1 M. & Scott, 93, S. C.; *Thrustout v. Crofter*, 2 W. Bl. 326; Tidd's New Pract. 181. And also in the Queen's Bench it was held that the attorney had a lien on the judgment obtained by his client against the opposite party, to the extent of his costs of that cause only; *Stephens v. Weston*, 3 B. & C. 535; 5 D. & R. 399, S. C.; *Watson v. Maskell*, 1 Scott, 286; 1 Bing. N. C. 366, S. C. And the plaintiff in that Court might have set off interlocutory costs in the same cause, payable by him to the defendant, against the debt and costs so incurred by him on the final result of the cause, notwithstanding the objection of the defendant's attorney on the ground of his lien, which only attached on the general result of the costs, &c., of the cause; *Howell v. Harding*, 8 East, 362; *Lang v. Webber*, 1 Price, 375; *Doe v. Allsop*, 9 B. & C. 760; Tidd's New Pract. 182. The practice in all the Courts is now regulated by 1 Reg. Gen. of H. T. 2 W. 4, s. 93. The words of that rule are "no set

off of damages or costs between parties shall be allowed to the prejudice of the attorney's lien for costs in the particular suit against which the set-off is sought: provided, nevertheless, that interlocutory costs in the same suit, awarded to the adverse party, may be deducted." It has been held that this rule applies only to instances of set-off between adverse parties in separate suits; *George v. Elston*, 3 Dowl. 419; 1 Hodges, 63; 1 Bing. N. C. 513, S. C.; and see *Loes v. Kendall*, 3 A. & E. 707; 5 N. & M. 340, S. C.; and therefore, where there are several defendants, and some succeed, and some do not, the unsuccessful defendants may set off the costs due to the successful one, notwithstanding the effect of it would be to deprive the attorney of his lien; *Holliday v. Lawes*, 3 Bing. N. C. 774; *Doe v. Carter*, 8 Bing. 330; Dowl. 269, S. C. It gives the attorney a lien on the judgment for his costs as between attorney and client; *Watson v. Maskell*, 3 Dowl. 638; 1 Bing. N. C. 727; 1 Hodges, 73, S. C. in the particular case only, and not for his general balance; *Watson v. Maskell*, 1 Bing. N. C. 366. No set off of judgment will be allowed under this rule, even though they arise out of the same award, without satisfying the attorney's lien; *Domett v. Helyer*, 2 Dowl. 540. Also where upon a reference of two causes, damages in the first were ordered by the award to be set off against costs in the second, it was held that this could only be done subject to the lien of the attorney of the plaintiff in the first cause, for his costs. *Covell v. Butterley*, 10 Bing. 432; 4 M. & Scott, 265; 2 Dowl. 780, S. C.; and see *Cadeall v. Smart*, 4 Dowl. 760; *Doe v. Sinclair*, 5 Dowl. 26; 3 Scott, 42, S. C.

As regards the set off of interlocutory costs in the same suit due to one party, they may be set off against final costs due to the other party, without regard to the attorney's lien; *Holliday v. Lawes*, 3 Bing. N. C. 774; see *Doe v. Carter*, 8 Bing. 330; Dowl. 269, S. C. In this latter case, though the set off of interlocutory costs was allowed, it was so subject to the attorney's lien. There is no doubt they may be so set off where the payment of them at the time they are adjudged cannot be strictly considered as a condition precedent to further proceedings. So far as to the lien of an attorney.

We now proceed to state the practice as it at present stands with respect to a solicitor's right under similar circumstances.

A solicitor prosecuting a suit to a decree has a lien on the estate recovered, in the hands of the client recovering it, for his bill, *Barnesley v. Powell*, 1 Amb. 102; but it is said, if the client die, he has no lien on the estate in the hands of the heir, unless it be necessary to revive, in which case the lien also is revived. *Barnesley v. Powell*, 1 Amb. 102. A solicitor has a lien on a fund decreed to the client; and where decreed to an administrator, the solicitor's lien must be satisfied before the bond creditors of the deceased; nor can the administrator controvert this rule, by insisting on applying the assets in a course of administration. *Turwin v. Gibson*, 3 Atk. 719. If a solicitor has declined to act for his client, he has no lien for his costs upon a fund in Court. *Creswell v. Byron*, 14 Ves. 271. The solicitor's lien on a fund decreed to his client does not extend beyond his costs in that suit to costs due to him in other suits; *Lann v. Church*, 4 Madd. 391, although a query is raised on this point in *Worrall v. Johnson*, 2 J. & W. 214. If a sum is declared due by decree or judgment, a solicitor may give notice to the opposite party not to pay the money until his costs are satisfied. *Cowell v. Simpson*, 16 Ves. 275. And if after notice such party pays it, he will be liable to pay over again to the solicitor the amount of his lien. Beam. Costs, 318. The lien of the solicitor on the fund may be destroyed by the parties compromising the suit; and if the compromise is *bond fide*, it does not appear that the solicitor's lien can be set up against it, but a voluntary release does not deprive the solicitor of costs. Beam. Costs, 312. Lord *Hardwicke* said, "if the client had, by composition or any reasonable consideration for the costs, made an end with his adversary, I would not suffer this equity (lien) to be set up; but (he added) it shall not be defeated by a collusion." Beam. Costs, 313. Lord *Eldon* said, "the doctrine of this court has always been, that where in a cause comprising a great number of questions, costs may ultimately be due to both parties, and sums to be paid as duties to each, the demands of both shall be arranged so as to do justice between them, and the lien of the solicitor it only as to those costs, which, upon the whole taken together, one party can claim from the other." And in a subsequent case, the same judge observed that the practice of this Court does not interpose the lien further than upon the clear balance, which is the result of the equity between the par-

ties. Beam. Costs, 314. In *Ex parte Bryant*, 1 Madd. 49, on the petition of the solicitor, the parties were ordered to pay costs to the solicitor, although the client to whom such costs were payable had released them. In *Williams v. Edwards*, 2 Sim. 78, one of the terms of an agreement was, that the contract should be void if the purchaser's counsel should be of opinion that a marketable title could not be made by a certain time. The counsel being of that opinion, a bill by the purchaser for a specific performance, with a compensation, was dismissed with costs; and on application afterwards made by the plaintiff that his deposit might be set off against the defendant's costs, and the surplus (if any) paid to him, was refused with costs. See the cases of *Ex parte Bryant*, 1 Madd. 49; *Wright v. Mudie*, 1 Sim. & Stu. 266; *Smith v. Brocklesby*, 1 Anstr. 61; *Bennet College v. Carey*, 3 Brown's C. C. 390; *Randle v. Fuller*, 6 T. R. 456.

NOTES ON EQUITY.

NEW TRUSTEE.

By the 11 Geo. 4, and 1 W. 4, c. 60, s. 22, it is recited that whereas cases may occur upon applications by petition under this act for a conveyance or transfer, where the recent creation or declaration of the trust or other circumstances may render it safe and expedient for the Lord Chancellor, intrusted as aforesaid, or the Court of Chancery (as the case may require) to direct, by an order upon such petition, a conveyance or transfer to be made to a new trustee or trustees, without compelling the parties seeking such appointment to file a bill for that purpose, although there is no power in any deed or instrument creating or declaring the trusts of such land or stock to appoint new trustees: Be it therefore further enacted, that in any such case it shall be lawful for the Lord Chancellor, intrusted as aforesaid, or the said Court of Chancery, to appoint any person to be a new trustee by an order to be made on a petition to be presented for a conveyance or transfer under this act, after hearing all such parties as the said Court shall think necessary; and, thereupon, a conveyance or transfer shall and may be made and executed according to the provisions hereinbefore contained, to, or so as to vest such land or stock in, such new trustee, either alone or jointly with any surviving or continuing

trustee, as effectually and in the same manner as if such new trustee had been appointed under a power in any instrument creating or declaring the trusts of such land or stock, or in a suit regularly instituted.

This was a petition presented under the above act for the appointment of new trustees of a deed, the surviving trustee being out of the jurisdiction of the Court. Mr. Turner, in support of the petition, said that the deed creating the trust, contained a power to appoint new trustees, which was now vested in the surviving trustee; that the 22d sect. was the only section of the act which authorized the Court to appoint new trustees upon petition; and it seemed to be doubtful from the language of the recital, whether that section authorized the Court to appoint new trustees in any case, except where the instrument creating the trust contained no power to appoint new trustees. The *Vice Chancellor*. This case is clearly within the 22d section of the act. That section refers to the case of an instrument containing no power to appoint new trustees, as one of the strongest instances of difficulty; but it is not thereby meant that the existence of that circumstance is to be the condition upon which the power thereby given to the Court is to be exercised. If the Court may make the appointment, where the instrument creating the trust contains no power for that purpose, it surely may do so where the instrument does contain such a power. *In re Fumtleroy*, 10 Sim. 253.

THE PROPERTY LAWYER.

DIVIDENDS OF STOCK.

IN contemplation of a marriage between Mr. and Mrs. Paton, certain sums of stock were transferred to trustees in trust for Mr. and Mrs. Paton, for their lives successively, and, subject thereto, in trust for their issue. Mr. Paton died on the 5th of July, on which day a half yearly dividend became due on the stock comprised in the settlement, and a question arose whether this dividend belonged to the widow, Mrs. Paton, or to the personal estate of Mr. Paton; and Sir L. Shadwell, V. C., said that "with respect to the dividends of the stock which became due on the 5th of July, 1837, the day of Mr. Paton's death, I am of opinion that, as he might have received these dividends, on applying to the Bank at any time on that day, they now form part of his personal estate." *Paton v. Sheppard*, 10 Sim. 192.

FIXTURES.

In the same case, it was held that under a bequest of *household furniture*, fixtures belonging to the testator in a leasehold house occupied by him, would pass. "The stoves, &c.," said the V. C. "are not the less furniture because they were fixed to the house." This accords with what was said in *Kelly v. Powlet*, Amb. 605, where the Master of the Rolls said, "The word household furniture has as general a meaning as possible. It is incapable of a definition. It is capable only of a description. It comprises every thing that contributes to the use or convenience of the householder, or ornament of the house." See also *Cole v. Fitzgerald*, 1 Sim. & Stu. 189; and 3 Russ. 301.

CHANGES IN THE LAW,

IN THE LAST SESSION OF PARLIAMENT.

No. XV.

TRIAL OF CONTOVERTED ELECTIONS.

4 & 5 Vict. c. 68.

(Continued from p. 291.)

39. *Members temporarily excused from serving.*—And be it enacted, that every member who shall have leave of absence from the House shall be excused from serving on election committees during such leave; and if any member in his place shall offer any other excuse, either at the reading over of the said names, or at any other time, the substance of the allegations shall be taken down by the clerk, in order that the same may be afterwards entered on the journals, and the opinion of the House shall then be taken thereon; and if the House shall resolve that the said member ought to be excused, he shall be excused from serving on election committees for such time as to the House shall seem fit, but no member shall be so excused who shall not claim to be excused before he shall be chosen to serve as herein-after provided; and every member who shall have served on one select committee for trying an election petition, and who, within seven days after such committee shall have made its final report to the House, shall notify to the clerk of the general committee his claim to be excused from so serving again, shall be excused during the remainder of the session, unless the House shall at any time resolve, upon the report of the general committee, that the number of members who have not so served is insufficient; but no member shall be deemed to have served on an election committee who on account of inability or accident shall have been excused from attending the same throughout.

40. *Members temporarily disqualified from serving.*—And be it enacted, that every member whose return shall not have been brought in for a time exceeding that all wed for ques-

tioning the returns of members, or who shall be a petitioner complaining of an undue election or return, or against whose return a petition shall be then depending, shall be disqualified to serve on election committees during the continuance of such ground of disqualification; and every member of any select committee appointed to try an election petition shall be disqualified to serve again on an election committee during seven days after the final report of the committee on which he so served.

41. *A corrected list, distinguishing the excused or disqualified members, to be printed and distributed with the votes.*—And be it enacted, that the clerk shall make out an alphabetical list of all the members, omitting the names of such members as shall have claimed to be wholly excused from serving on election committees as aforesaid; and the clerk shall also distinguish in such list the name of every member who shall be for a time excused or disqualified, and shall also note in the list every cause of such temporary excuse or disqualification, and the duration thereof, and such list shall be printed and distributed with the votes of the house, and the names of all the members so omitted shall be also printed and distributed with the votes.

42. *List may be further corrected during one week.*—And be it enacted, that during three days next after the day of the distribution of such corrected list further corrections may be made in such list by leave of the speaker, if it shall appear that any name has been improperly left in or struck out of such list, or that there is any other error in such list.

43. *Selection of members to serve as chairmen of election committees.*—And be it enacted, that the list so finally corrected shall be referred to the general committee of elections, and the general committee shall thereupon select, in their discretion, six, eight, ten, or twelve members, whom they shall think duly qualified, to serve as chairmen of election committees; and the members so selected shall be formed into a separate panel, to be called the chairmen's panel, which shall be reported to the House; and while the name of any member shall be upon the chairmen's panel he shall not be liable or qualified to serve on an election committee, otherwise than as chairman; and that every member who shall have been placed on the chairmen's panel shall be bound to continue upon it until the end of the session, or until he shall sooner cease to be a member of the House, or until, by the leave of the House, he shall be discharged from continuing upon the chairmen's panel: Provided always, that every member of the chairmen's panel who shall have served on one or more election committee, and who shall notify to the clerk of the general committee of elections his claim to be discharged from continuing upon the chairmen's panel, shall be so discharged accordingly; and every such member shall be excused from serving upon any election committee, either as chairman or otherwise, during the remainder of the session: but no member of the chairmen's panel shall be deemed to have served on

an election committee who on account of inability or accident shall have been excused from attending the same throughout.

44. *List to be divided into five panels.*—And be it enacted, that after the chairmen's panel shall have been so as aforesaid selected, the general committee shall divide the members then remaining on such list into five panels, in such manner as to them shall seem most convenient, but so nevertheless that each panel may contain, as nearly as may be, the same number of members, and shall report to the House the division so made by them; and the clerk shall decide by lot at the table the order of the panels as settled by the general committee, and shall distinguish each of them by a number denoting the order in which they shall have been drawn; and the panels shall then be returned to the general committee of elections, and shall be the panels from which all members shall be chosen to serve on election committees.

45. *General committee to correct the panels from time to time.*—And be it enacted, that the general committee of elections shall correct the said panels from time to time, by striking out of them the name of every member who shall cease to be a member of the House, or who from time to time shall become entitled and shall claim as aforesaid to be wholly excused from serving on election committees, and by inserting in one of the panels to be chosen by the general committee at their discretion, the name of every new member of the House who shall not be entitled and claim as aforesaid to be wholly excused; and shall also from time to time distinguish, in the manner aforesaid, in the said panels, the names of those members who shall be for a time excused or disqualified for any of the reasons aforesaid: and the general committee shall, as often as they shall think fit, report to the House the panels as they shall then stand corrected; and as often as the general committee of elections shall report the said panels to the House they shall be printed and distributed with the votes of the House.

46. *Power to transfer to another panel the names of members obtaining leave of absence.*—And be it enacted, that when leave of absence for a limited time shall have been granted by the House to any member, it shall be lawful for the general committee of elections to transfer the name of such member from the panel in which it shall have been placed to some other panel subsequent in rotation, if they shall think fit so to do, having regard to length of time for which such leave of absence shall have been granted, and to the number of select committees then about to be appointed.

47. *For supplying vacancies, and increasing the chairmen's panel.*—And be it enacted, that whenever any member of the chairmen's panel shall cease to be a member of the House, or shall be, by leave of the House, discharged from continuing upon the chairmen's panel, or shall be so discharged by reason of service, under the provision herein-before contained, the general committee shall forthwith select

another member to be placed upon the chairmen's panel in his room; and in case it shall at any time appear to the general committee that the chairmen's panel is too small, it shall be lawful for the general committee to select two, four, or six additional members to place upon it, so nevertheless that the chairmen's panel shall not at any time consist of more than eighteen members without the leave of the House first obtained.

48. *Members upon chairmen's panel to make regulations.*—And be it enacted, that it shall be lawful for the members who are upon the chairmen's panel from time to time to make such regulations as they may find convenient for securing the appointment or selection of chairmen of election committees, and for distributing the duties of chairman among all of them.

49. *General committee to determine how many committees shall be chosen in each week.*—Notice to be given when any committee will be chosen.—And be it enacted, that the general committee of elections shall from time to time determine how many committees shall be chosen in each week for trying the election petitions which then stand referred to them in which the sureties shall have been reported unobjectionable, and the day or days on which they will meet for choosing such committees, which they shall choose in the same order in which the petitions stand in the list aforesaid, having regard to the number of select committees which may then be sitting for the trial of election petitions, and to the whole number of such committees then to be appointed; and notice of the time and place at which the committee will be chosen to try any election petition shall be published with the votes, and in case the conduct of the returning officer is complained of, shall be sent to such returning officer through the post not less than fourteen days before the day on which such committee shall be chosen; and every such notice shall direct all parties interested to attend the general committee of elections, by themselves, their counsel or agents, at the time appointed for choosing the select committee.

50. *Notice of petitions and panels.*—And be it enacted, that notice shall be published with the votes of the petitions appointed for each week, and of the panel from which committees will be chosen to try such petitions.

51. *Provision for cases where the sitting member does not defend, and some party has been admitted to defend, &c.*—And be it enacted, that in all cases where notice of the death or vacancy of the seat of any member petitioned against, or that it is not the intention of such member to defend his election or return, shall have been inserted in the Gazette, by order of the Speaker, and some party shall have been admitted to defend such return, as herein-before provided, or where the conduct of the returning officer is complained of, the general committee of elections shall meet for choosing the select committee to try the petition relating to such return, at a time to be appointed by them, not sooner than fourteen

days after the petition (or the last of the petitions, if more than one) to be allowed to defend such election or return shall have been referred to them; and not less than fourteen days notice shall be given in the votes of the time appointed for choosing such select committee, and any former notice that may have been given shall be taken to be annulled; but if no party shall have been admitted to defend such election or return, and if the conduct of the returning officer is not complained of in such petition, the general committee of elections shall meet for choosing the select committee to try such petition as soon as conveniently may be after the expiration of the time allowed for parties to come in to defend such election or return as herein-before provided; and not less than one day's notice of the time and place appointed for choosing such committee shall be given in the votes.

52. *General committee empowered to change the day for choosing select committee.*—And be it enacted, that it shall be lawful for the general committee of elections to change the day and hour appointed by them for choosing a select committee to try any election petition, and to appoint some subsequent day and hour for the same, if it shall in their judgment be expedient so to do, giving notice in the votes of the day and hour so subsequently appointed; and in every case in which any such change shall be made by them they shall forthwith report the same to the House, with their reasons for making such change.

53. *Lists of voters intended to be objected to shall be delivered to the clerk of the general committee.*—And be it enacted, that in all cases of controverted elections or returns of members to serve in Parliament, all the parties complaining of or defending such elections or returns shall, by themselves or their agents, deliver in to the clerk of the general committee lists of the voters intended to be objected to, giving in the said lists the several heads of objections, and distinguishing the same against the names of the voters excepted to, not later than six of the clock in the afternoon on the sixth day next before the day appointed for choosing the committee to try the petition complaining of such election or return; and the said clerk shall keep the lists so delivered to him in his office open to the inspection of all parties concerned.

54. *Select committee to be chosen.*—And be it enacted, that the general committee shall meet at the time appointed for choosing the committee to try any election petition, and shall choose from the panel then standing next in order of service, exclusive of the chairmen's panel, six members, not being then excused or disqualified for any of the causes aforesaid, and who shall not be specially disqualified for being appointed on the committee to try such petition for any of the following causes: (that is to say,) by reason of having voted at the election, or by reason of being the party on whose behalf the seat is claimed, or related to the sitting member or party on whose behalf the seat is claimed by kindred or

affinity in the first or second degree according to the canon law; and each panel shall serve for a week, beginning with the panel first drawn, and continuing by rotation in the order in which they were drawn, and not reckoning those weeks in which no select committee shall be appointed to be chosen.

55. *In case of disagreement, the general committee to adjourn. Committees to be chosen for petitions according to their order on the list.*—And be it enacted, that in case at the least four members then present of the general committee of elections shall not agree in choosing a committee to try any petition appointed for that day, the general committee shall adjourn the choosing of that committee, and of the remaining committees appointed to be chosen on that day, to the following day, and the parties shall be directed to attend on the following day, and so from day to day (with the exception of Sunday, Good Friday, and Christmas Day,) until all such committees shall be chosen, or until the general committee of elections shall be dissolved as herein-before provided; and the general committee shall not in any case proceed to choose a committee to try any election petition, until they shall have chosen a committee to try every other election petition standing higher in the list aforesaid, the order for referring which shall not be then discharged, or in which the proceedings shall not be then suspended under the provisions hereinbefore contained, except in the case of choosing a committee to supply the place of a discharged committee, as herein after provided, which substituted committee shall be first chosen on the day on which the general committee shall meet for that purpose, and also except in the case where the day originally appointed for choosing a committee shall have been changed under the provisions hereinbefore contained.

56. *When committee chosen, the parties to be called in.*—And be it enacted, that as soon as the general committee of elections shall have chosen a committee to try any such petition, the parties in attendance shall be called in, and the names of the committee chosen shall be read over to them.

57. *General committee to proceed in order with all the petitions appointed for that day.*—And be it enacted, that after hearing the names of the committee chosen, the parties present shall be directed to withdraw, and the general committee may proceed to choose another committee to try the next petition appointed for that day, until all the committees appointed to be chosen on that day shall be chosen, or until the choosing of any committee shall be adjourned as aforesaid; and after any such adjournment the general committee shall not transact any more business on that day, except with regard to those petitions for trying which committees shall have been previously chosen.

58. *Parties may object to disqualified members. If general committee allow the disqualification, a new committee to be chosen.*—And be it enacted, that within one half-hour at furthest

from the time when the parties to any election petition shall have withdrawn, or if the parties to any other election petition shall then be before the general committee of elections, then after such other parties shall have withdrawn, the parties in attendance shall be again called before the general committee in the same order in which they were directed to withdraw; and the petitioners and sitting member or members, or such party as may have been admitted as aforesaid to defend the return or right of election, their counsel or agents, beginning on the part of the petitioners, may object to all or any of the members chosen, as being then disqualified or excused, for any of the reasons aforesaid, from serving on the committee for the trial of that election petition, but not for any other reason whatsoever; and if at the least four members then present of the general committee shall be satisfied that any member so objected to is then disqualified or excused for any of the reasons aforesaid, the parties present shall be again directed to withdraw, and the general committee shall proceed to choose another committee from the same panel to try that petition, and so as often as the case may happen; and in the second or any following committee the general committee may, if they shall think fit, include all or any of the members first chosen by them, except those who shall have been objected to, and who shall have been allowed by the general committee to be disqualified or excused; and no party shall be allowed to object to any member who may be included in the second or any following committee who was not objected to when included in the committee first chosen to try that petition.

59. *Notice to be sent to every member chosen.*—And be it enacted, that when six members shall have been chosen, none of whom shall have been objected to, the clerk of the general committee of elections shall give notice thereof in writing to each of the members so chosen; and with every such notice shall be sent a notice of the general and special grounds of disqualification and excuse from serving which are hereinbefore mentioned, and of the time and place when and where the general committee will meet on the following day; and notice of the time and place of such meeting shall be published with the votes.

60. *If any member chosen proves disqualification, another committee to be chosen.*—And be it enacted, that the general committee shall meet in the following day at the time and place mentioned in such notice as last aforesaid; and if any member shall then and there prove, to the satisfaction of at least four members then present of the general committee, that, for any of the reasons aforesaid, he is disqualified or excused from serving on the committee for which he shall have been so chosen, or if any such member shall prove, to the satisfaction of at least four members then present of the general committee, that there are any circumstances in his case which render him ineligible to serve on such select committee, such circumstances having regard not

to his own convenience, but solely to the impartial character of the tribunal, the general committee shall proceed to choose a new committee to try that petition, in like manner as if that member had been objected to by any party to the petition; and if within the space of one hour after the time mentioned in the notice no member shall so appear, or if any member so appearing shall not prove his disqualification or excuse, to the satisfaction of at least four members then present of the general committee, a chairman shall be appointed to the six members so chosen, to be of the select committee in the manner hereinafter mentioned.

61. *Members on chairmen's panel to appoint chairman to select committee.*—And be it enacted, that when six members of the committee are finally chosen as aforesaid the members who are upon the chairmen's panel shall notify to the members of the general committee the name of the member who has been appointed or selected by them as the chairman of such election committee, and the general committee shall add his name to the names of the six members chosen by them as aforesaid, and they shall communicate the name of such chairman to the parties interested, or such of them as still think fit to attend for that purpose, and if no objection be substantiated thereto the select committee shall then be taken to be appointed: Provided always, that no member shall serve as chairman of any election committee who would be disqualified from serving on such committee if not upon the chairmen's panel; and any of the parties in attendance may object to such chairman as being then disqualified or excused, for any of the reasons aforesaid, from serving on the committee for the trial of that election petition, but not for any other reason whatsoever; and if at the least four members then present of the general committee shall be satisfied that the chairman so objected to is disqualified or excused for any of the reasons aforesaid, the parties present shall be again directed to withdraw, and the general committee shall send back the name of such chairman to the members on the chairmen's panel, and the members on the chairmen's panel shall proceed to choose another chairman to try that petition, and so as often as the case may happen; and the name of the chairman to whom no objection shall be substantiated shall be added to the names of the six members chosen by them, and the select committee shall then be taken to be appointed.

62. *Select committee to be reported to the House.*—And be it enacted, that at the meeting of the House of Commons for the despatch of business next after any such select committee shall be appointed, the members chosen, including the chairman, shall attend in their places, and the general committee of elections shall report to the House the names of the select committee appointed, and shall annex to such report all petitions referred to them by the House which shall relate to the return or election of which such select committee is appointed to try the merits, and all lists of voters

which shall have been delivered to them by either party; and the members chosen to be of the said select committee shall not depart the House till the time for the meeting of such select committee shall be fixed.

63. *Members of select committee to be sworn.*—And be it enacted, that the seven members appointed as herein-before is mentioned shall, before departing the House, be sworn at the table, by the clerk or clerk assistant, well and truly to try the matter of the petitions referred to them, and a true judgment to give according to the evidence, and shall be taken to be a select committee legally appointed to try and determine the merits of the return or election so referred by the House to them; and the member so appointed from the chairmen's panel shall be the chairman of such committee.

64. *Members of said committee not present within one hour after the meeting of the House to be taken into custody by the Serjeant at Arms.*—And be it enacted, that if any member of the said committee shall not attend in his place within one hour after the meeting of the House on the day appointed for swearing the said committee, or if, after attending, any member shall depart the House before the said committee shall be sworn, unless the committee shall be discharged, or the swearing of the said committee shall be adjourned as herein-after provided, he shall be ordered to be taken into the custody of the Serjeant at Arms attending the House, for such neglect of his duty, and shall be otherwise punished or censured, at the discretion of the House, unless it shall appear to the House, by facts specially stated, and verified upon oath, that such member was by a sudden accident or by necessity prevented from attending the House.

65. *If any such member is not present within three hours after the meeting of the House, the proceedings to be adjourned.*—And be it enacted, that if any such absent member shall not be brought into the House within three hours after the meeting of the House on the day first appointed for swearing the said committee, and if no sufficient cause shall be shown to the House before its rising whereon the House shall dispense with the attendance of such absent member, the swearing of the committee shall be adjourned to the next meeting of the House; and all the members of the said committee shall be bound to attend in their places, for the purpose of being sworn at the next meeting of the House, in like manner as on the day first appointed for that purpose.

66. *All the members not attending after adjournment, the committee to be discharged.*—And be it enacted, that if on the day to which the swearing of the said committee shall be so adjourned all the members of the committee shall not attend and be sworn, or if sufficient cause shall be shown to the House before its rising, on the day first appointed for swearing the said committee, why the attendance of any member of the committee should be dispensed with, the said committee shall be taken to be discharged, and the general committee shall meet on the following day (Sundays, Christmas

Day, and Good Friday excepted), and shall proceed to choose a new committee from the same panel from which the discharged committee was chosen in the manner herein-before provided, and notice of such meeting shall be published with the votes.

[To be continued.]

NOTICES OF NEW BOOKS.

The Stamp Laws considered, with a view to their influence on the Admission of Deeds and other Writings in Evidence. The Probate and Legacy Duty Acts, and the cases decided thereon; with an Appendix of the Stamp Acts relating to Ireland and the United Kingdom. By George William Collins, Esq., of Lincoln's Inn, Barrister at Law. A. Maxwell, 1841.

The statutes imposing stamp duties, notwithstanding their frequent amendment, or attempted amendment, form a very vexatious and difficult branch of law. Without dwelling on the burthensome amount of the tax on every transfer of property, we may for the present advert to the grievance, both to solicitor and client, of the uncertainty of several parts of the law, and especially the inability to cure the defect at the trial, in case the judge should be of opinion that an insufficient stamp has been impressed on the document tendered in evidence. It is much to be regretted that the bill prepared a few years ago for consolidating and amending the law, was not perfected. By that measure, when an instrument offered in evidence was objected to as insufficiently stamped, it was intended to permit the party to pay the amount of the deficient duty with a penalty, into the hands of the officer of the court. This might have been liable to occasional abuse; but the penalty would generally have been a sufficient protection to the revenue.

On this subject, we may notice the cases which the present author has collected, where the objection to an insufficient stamp was precluded.

"A party may be precluded, both at law and in equity, by the form of pleading, from objecting to a document being received on account of its being improperly stamped. In a suit for specific performance of an agreement, contained in letters which were set forth in the bill and admitted in the answers, a decree was pronounced 'upon inspecting the record of the bill,' and the court refused to make any inquiry as to whether the original letters were stamped.^a Lord Eldon, in the course of his

judgment, observed, that wherever an action has been brought upon an agreement that ought to be on a stamp, and the form of the pleading has been such that at the trial it was not necessary to produce the instrument, as if it was admitted upon the record, and the trial was upon issues collateral to the existence of the agreement, it has never been considered as open to the court to examine the question whether the instrument was legally available with reference to the stamp laws. His Lordship also adverted to the distinction between an agreement that may be stamped, paying the penalty, which the party will be permitted to stamp pending the cause, and one upon which no action can be brought unless stamped.

"And in assumpsit by an administrator upon promises laid to his intestate with a profert of the letters of administration, and non assumpsit pleaded, the defendant was not allowed upon production of the letters of administration to object to the stamp, for the plea admitted that the plaintiff was administrator.^b

"But where a plaintiff declares as administrator in trover and upon a conversion in his own time, the styling himself as administrator is of no avail, he must prove himself to be such; and the question is raised by the plea of not guilty in trover, for it goes to the foundation of the plaintiff's title, and the want of administration need not then be specially pleaded.^c

"By the payment of money into court, the validity of the instrument upon which the action is founded is admitted, and therefore the defendant will not afterwards be allowed to avail himself of an objection to the stamp.^d

"Where a party applies for a permission to inspect or take a copy of an instrument, it is usually granted upon the terms of not objecting at the trial to the stamp affixed to the original.^e And the effect of an admission of a document described in a notice under Reg. Gen. 4 W. 4, s. 20, is, that a document was executed of the same character as that described in the notice. As, where the plaintiff gave the defendant notice under this rule that he would be required to admit, on the trial, a counterpart of a lease from T. to S., dated &c.; and a judge, on summons, made an order by consent for admitting the same. The instrument produced on the trial was in the form of a demise from T. to S. of the date specified, and was indorsed 'counterpart,' but was executed by the landlord as well as the tenant. No proof was given that any original or duplicate lease had or had not existed. The stamp was sufficient for a counterpart, but not for a lease. It was held that the defendant having consented to admit a counterpart of a lease, corresponding in date and parties with that produced, could not then contend that the instrument then produced was a lease, and therefore improperly stamped, although the

^b *Thynne v. Protheroe*, 1814, 2 M. & S. 553.

^c *Hunt v. Stevens*, 1810, 3 Taunt. 113.

^d *Israel v. Benjamin*, 1811, 3 Camp. 40.

^e *Price v. Boulby*, 1 C. & P. 466; Park, J.

^a *Huddleston v. Briscoe*, 1805, 11 Ves. 583.

court were inclined to think that, under the circumstances, independently of the admission, a lease stamp was necessary.^f

"And although it is a general rule that it is not sufficient that a copy of the agreement or other instrument is stamped, even where the original is lost or destroyed; yet, where an instrument was wrongfully obtained and destroyed by one of the parties to it before the twenty-one days for stamping had expired,^h the court permitted a copy to be stamped, and directed that the party who had destroyed the agreement should not avail himself of the objection that it was never stamped.ⁱ And where notice has been given to the adverse party to produce an instrument, and he fails to do so, it will be presumed as against him that the instrument kept back was duly stamped.^k

"It may here be observed that where two bills were overdue, one of which had been so altered after it had been issued as to require a new stamp, the holder was allowed to appropriate a payment made on account of both bills wholly in reduction of the amount due on the bill void for want of a new stamp, although the party making the payment was only liable to the holder, in respect of the bills.^l

"From the foregoing cases it appears that a party may in several ways be precluded from raising an objection to the stamp; still, however, this objection, at least in equity, cannot be waived by express stipulation, the court feeling it to be incumbent upon it to afford every protection to the revenue, and, if the circumstance come to the knowledge of the court, the decree will be directed not to be delivered out, until the instrument duly stamped be produced to the registrar.^m

In order to obviate and remedy the objection so far as practicable, Mr. Collins states that—

"If an instrument offered in evidence be objected to as being improperly stamped, the party offering it may either go into the rest of his evidence and send the instrument to the stamp office, to be stamped anew, taking the chance of its coming back sufficiently early; or his counsel may argue the objection, taking the stamp as it is: but if the instrument be sent away to the stamp office, the judge will not allow any argument as to the original stamp being proper.ⁿ

"An instrument produced on notice is in the custody of the court, and an officer of the

court, at the suggestion of counsel, and upon his assuring the court that he has many witnesses to examine whom he is not about to call for the mere purpose of occupying time, will be directed to go with the person who is desirous to get it stamped.^o

"In equity if an objection is made on account of a defective stamp, the court will not stop the cause, but will direct the decree not to be delivered out until the instrument objected to is produced to the registrar duly stamped.^p And courts of common law, when sitting in banco, will sometimes enlarge a rule for the purpose of affording an opportunity to procure the proper stamp.^q But at Nisi Prius, where the objection to the stamp is entertained, and cannot be obviated during the trial, the party, if plaintiff, must submit to be nonsuited, or, if defendant, the plaintiff's case will go to the jury unaffected by the document tendered in evidence on the part of the defendant,^r and the court will not usually set aside the nonsuit or verdict, but will leave the parties to pursue any ulterior measures they may think proper to adopt.^s But the courts have of late felt much inclined to relax the severity of this rule, and have in many instances, where a reasonable doubt might be entertained, and especially if it appear that the mistake is attributable to the stamp office, granted a new trial upon payment of costs as between attorney and client.^t It appears also that, if a total failure of justice be likely to take place, as where the party would otherwise be barred by the statute of limitations, a new trial upon the same terms will be granted.^u In one case where an objection was taken to an instrument for not being properly stamped with the progressive duty, and a witness was called who had counted the words in a counterpart, the counsel for the plaintiff thereupon submitted to be nonsuited, without giving the officer of the court the trouble to count the words, and it was afterwards found that the stamps were sufficient; the court, upon an affidavit of the circumstances, granted a new trial.^v These observations, of course, only apply to those cases where the instrument may be properly stamped on payment of a pecuniary penalty.^w

Looking at the practical importance of the stamp laws, we gladly notice this new

^o *Clements v. May*, 1836, 7 C. & P. 678.

^p *Owen v. Thomas*, 3 M. & K. 353; *Chervet v. Jones*, 6 Madd. 267.

^q *Doe d. Phillips v. Roe*, 5 B. & A. 766; 1 D. & R. 433.

^r *Vincent v. Cole*, 1829, 3 C. & P. 481; Chitt. on Stamps, p. 43, n.

^s *Burton v. Kirkby*, 7 Taunt. 174; 2 Marsh. 481. Per Gibbs, C. J.

^t *Clayton v. Burtenshaw*, 1826; 7 D. & R. 800; 5 B. & C. 47; *South v. Finch*, 1837, 3 Bing. N. C. 506; 4 Scott, 293.

^u *Reid v. Smart*, 1828, Chitt. on Stamps, p. 60, n. Per Lord Tenterden.

^v *Dudley and Ward, Lord v. Robins*, 1827, 3 C. & P. 86.

^f *Doe v. Smith*, 1838; 8 A. & E. 255; 3 N. & P. 335; 2 Moo. & R. 7; 1 W. W. & H. 429; and see *Quin v. King*, 1 M. & W. 42.

^g *Rippener v. Wright*, 2 B. & A. 478.

^h 23 Geo. 3. c. 58, s. 5.

ⁱ *Bousfield v. Godfrey*, 1829, 2 M. & P. 771; 5 Bing. 418; but see *Travis v. Collins*, 2 C. & J. 625; 2 Tyr. 726.

^k *Crisp v. Anderson*, 1815, 1 Stark. 35.

^l *Biggs v. Dwight*, 1827, 1 M. & R. 308.

^m *Owen v. Thomas*, 1834, 3 M. & K. 353; *Chervet v. Jones*, 6 Madd. 267.

ⁿ *Beckwith v. Benner*, 6 C. & P. 681.

work, bringing down the statutes and decisions to the present time.

The plan of the great bulk of the book is a simple one; it follows the *alphabetical* order of the act of 55 Geo. 3, c. 184, and the effect of the cases is stated in notes. This perhaps is the best method to deal with the details of the act, because the practitioner can thus immediately turn to the point on which he requires information.

Some parts of the volume, however, are treated in a different manner. These consist of the denomination of the stamp; of several contracts embraced in one deed; of the alteration of instruments after they have been executed; of enforcing the production of instruments to be stamped; of the admission of unstamped instruments in evidence; of taking an objection to an instrument because it is unduly stamped; of foreign instruments, &c.

SELECTIONS FROM CORRESPONDENCE.

ADMINISTRATION OF REAL ASSETS FOR PAYMENT OF DEBTS.

In order to lessen the duties of Courts of Equity, and to save time and expence, I would submit that an alteration in the law on the above subject might be introduced by an enactment to this effect: that whenever a testator dies seized of real estate, indebted beyond the amount of his personal estate, and without devising his real estate to sell, &c., for payment of debts, the executors of the testator should have that power, without recourse to a Court of Equity on behalf of creditors; and in case of an intestacy, the administrator might be invested with similar powers. T. W.

LEASE AND RELEASE ACT.

To the Editor of the Legal Observer.
Sir,

As you have been kind enough to encourage discussion as to practice under the above act, I am induced to offer a few remarks upon the subject.

The suggestion of your correspondent H. K., stated at the end of your Journal of the 17th ult., would be very convenient if generally adopted, as it would save a search through the deed to ascertain whether the statute had been complied with, and would prevent a repetition of reference to the statute, in deeds containing several releasing parts, and avoid the consequences of an accidental omission to repeat such reference. But as it frequently happens that the same indenture contains an appointment, an assignment of term, and a covenant to produce deeds as well as a release; and every deed of release contains other operative words besides that of release; namely, the words "grant, bargain, sell, alien, release, and confirm," it seems to me that if your corres-

pondent's suggestion be adopted, the following qualifying words should be introduced after the date, *viz.*, "and so far as it is intended to operate as a deed of release."

The commencement of the deed would then be as follows:—

"This indenture made the 10th day of Aug. 1841 (and so far as it is intended to operate as a deed of release) in pursuance of an act passed in the 4th year, &c. Between, &c."

Where the act is referred to in the operative part, the following is the most accurate mode, as it appears to me:—

"The said A. B. hath bargained, sold, and released, and by this present deed or instrument made (so far as it is intended to operate as a release) in pursuance of an act, &c., doth bargain, sell, and release. And the said C. D. hath granted, bargained, sold, released, and confirmed, and by this present deed or instrument made (so far as it is intended to operate as a release) in pursuance of the said act, doth grant, &c."

As uniformity of practice in matters of mere form is convenient and desirable, I should hope that one particular form in this respect, will be generally adopted by the profession.

R. B.

SUPERIOR COURTS.

Judicial Committee of the Privy Council.

WILL.—DETACHED PAPERS.—CODICIL.—CANCELLATION.

A testator, by a paper called "Instructions for his will," appointed four persons executors, and desired them to take possession of and retain his personal estate, subject to his debts and such legacies as he might direct; and as to his real estate to such persons as he should direct. By another paper, dated the next day, he directed that all his estates, real and personal, should go amongst his executors and their heirs in equal proportions, subject to his debts and legacies. The names of the executors were not repeated in the second paper. Both papers were signed by the testator. Held, that the two papers might be taken together as the will of the testator.

A codicil, sent anonymously by the post to one of the legatees, was nearly torn through in two places, and part of it burnt off: Held not to be cancelled.

This was an appeal from the decision of Sir Herbert Jenner, by which the testamentary papers of James Wood, of Gloucester, were pronounced inadmissible, and an intestacy declared. Of these papers *verbatim* copies will be found at p. 23, *ante*. The case was argued for several days by the late *Attorney General* (now Lord Campbell), and Mr. Pemberton, in favour of the executors; by the present *Attorney General* and Sir W. Follett for the legatees under the codicil; and by Sir F. Pollock and Mr. Wigram for the next of kin. The following is the judgment of the Court, consisting of Lord Lyndhurst, Lord Brougham,

the *Master of the Rolls*, the *Vice Chancellor*, Sir J. *Littleale*, and Mr. Baron *Purke*.

Lord Lyndhurst.—This is an appeal from a judgment of the Prerogative Court of Canterbury, pronouncing against the validity of a certain paper writing, dated the 2d of December, 1834, and propounded with another paper writing, as together containing the will of James Wood; and also against the validity of a codicil propounded by the legatees, dated July, 1835. The testator James Wood, was a man far advanced in life, being about 80 years of age at the time of his death. He had for many years been engaged in trade in the city of Gloucester, as a mercer and banker, and had, by great attention to business, by his careful and parsimonious habits, and by bequests from certain of his relations, accumulated a very large estate, amounting to several hundred thousand pounds. The question, stripped of extraneous matter, resolves itself into a very limited compass. And, first, it should be observed, that there is no dispute as to the competency of the testator; although very far advanced in age, his faculties were entire, and his attention to business unimpaired. There is no question raised as to the exercise of any undue influence, which would, indeed, have been inconsistent with the known character of the testator. The points in controversy relate both to the will and the codicil.

The question as to the will is confined to the construction of the papers dated respectively the 2d and 3d of December, denoted by the letters A. and B., and to the circumstances connected with those instruments. We have felt it our duty through the whole of these proceedings anxiously to guard against being unduly influenced in our judgment by the misconduct of some of the parties interested in and connected with this case, imitating in this the caution and circumspection of the learned judge in the Court below. Adopting then his view, we shall consider the case with reference to the papers A. and B., as it would have existed at the death of the testator if A. had not been improperly removed and annexed to B., but had remained in the possession of Chadborn; with this reserve, however, that nothing is under the circumstances of this case to be presumed in favour of the appellants. Pursuing this course then, it will, we think, be convenient and proper first to consider the paper B. That paper is attested by three witnesses, the execution of it is proved, and there is no doubt of its being the act of James Wood, the testator. This paper, however, is inoperative by itself, the property being given to executors, and they are not named in the instrument. We are not to suppose this omission to have been by mistake or accident. The business was not transacted in a hurry. Chadborn, by whom the will was drawn, was a lawyer of experience; the testator must have known that the executors were not named in the paper. He read it over twice in the presence of the witnesses before he signed it. He was a man of business, and even of some experience in the making of wills. The omission must have

been observed. The necessary inference, therefore is, that in bequeathing the property to his executors, he must have meant executors already named, or thereafter to be named in some other instrument. The first appears the natural construction, the second forced, and very improbable. If he considered he had appointed his executors, it was natural to mention them as he had done—generally, his executors. If he referred to a future appointment, it would have been almost of course to describe them as executors hereafter to be appointed, or to have used words to that effect. Again, the testator must, we think, when he executed paper B., have meant to make an effective disposition of his property. Why should he have made his will bequeathing his property to his executors and doing nothing more, if he had not been fixed upon the persons who were to be his executors? It was doing nothing; it was altogether an idle act, and wholly inoperative for any purpose he can be supposed to have had in contemplation. But if he had fixed upon them, he would naturally have named them, unless he had already done so in some other instrument to which he was then referring. It was obvious, too, he considered he was doing an act that was to have some effect. He was anxious for Chadborn to come to finish the business. After he had twice read the will over, he asked in the presence of witnesses, whether he could alter it. Why put that question if he did not consider it to be a complete will—if he knew it to be inoperative until something further were done to make it effectual? It is also to be observed that there is no trace or suggestion of any subsequent appointment of executors; and yet in the codicil, made a few months afterwards (the handwriting of which we think is fully established, and which we are hereafter to consider), the testator again speaks of his executors as persons already appointed. He says, "I wish my executors would give such and such sums, &c.;" and after stating the legacies, he proceeds thus—"and I confirm all other bequests, and give the rest of my property to the executors for their own interest." It may indeed be said that there might have been an intermediate appointment of executors, and that this may have been purloined or destroyed. But such an appointment, to be effectual, in the case of real as well as personal property, must have been attested by three witnesses; and if any such instrument had been executed in this interval, it is scarcely possible to suppose there would have been no knowledge, or even trace of it. All this tends to the conclusion, that the testator had already named his executors in some instrument, and that he referred to that instrument and to the executors so named when he executed the paper B. The existence and production of such an instrument would, we think, render this conclusion irresistible. This being our opinion as to the true import and construction of paper B., the next question will be, was there any such instrument?

This leads then to the consideration of the

paper marked A. It bears date the 2d of December, and is signed by the testator, for we are satisfied as to the handwriting. It is entitled "Instructions for the will of me, James Wood, Esq. of Gloucester," and it proceeds thus:—"I request my friends, Alderman Wood, of London, M.P., John Chadborn, of Gloucester, Jacob Osborn, of Gloucester, and John S. Surman, of Gloucester, to be my executors, and I appoint them executors accordingly." In this paper then, purporting to be drawn up by the direction of the testator, signed by him, and dated the day before the date of the will, he expressly names his executors. "I request them to be my executors, and appoint them executors accordingly." The will B. begins by referring to instructions. "I, James Wood, do declare this to be my will for disposing my estates, as directed by my instructions." The expressions, we think, import instructions in writing. If the paper A. then be genuine, there were instructions of this description dated only the day before, and signed by the testator. The natural inference, therefore, is that in speaking of instructions he referred to these, and in these instructions he had named his executors. "I request my friends, (naming them) to be my executors, and I appoint them executors accordingly." We think, then, if this paper be genuine, that no reasonable doubt can be entertained that the executors to whom the testator thus bequeathed his property were meant to be the persons named as such by him in the paper entitled "Instructions of the 2d of December." If the testator in the paper, B., meant, as we think he did, executors already named, they must have been the executors named in the instructions of the day before, or there must have been some subsequent written appointment of executors in the interval (an interval of only a few hours), of which there is no trace, and which is extremely improbable. If the testator, then, intended to refer to paper A, and to the persons therein named as executors, the circumstance of the paper being entitled and intended as instructions for the will would not, we think, impair the effect of the reference. For suppose he had in terms said "The executors named in my instructions of the 2d of December," this would indisputably have been sufficient. But if we are satisfied, from the circumstances, that he referred to paper A. and to the executors therein named, the same consequence would necessarily follow. The effect of the reference to A. would be the same as to any other paper, although A. might be intended either in the whole or in part as instructions.

It has been argued, that the instructions in paper A. could not have been the instructions referred to, because the testator disposed of his property, not according to these instructions, but in a different manner. For, first, as to the personal property, the instructions give it to the executors as joint tenants, whereas by the paper B., they take it as tenants in common. This objection does not appear to us to be of any weight. The instructions are general; they

will more precise and specific. In this there is not only no inconsistency, but it is not at all unnatural. Secondly, then, as to the real property. In the paper A. the testator says, "He shall dispose of the same to such persons and in such parts as he shall by any writing endorsed thereon direct." By the will, the disposition of the property, both real and personal, is on a separate paper, and without endorsement. This also appears to us to be an immaterial circumstance. These observations and this reasoning have proceeded upon the assumption that the paper A. was what it purports to be, the act of the testator, and signed by him on the day it bears date, viz., the day before the date of the will. We are, as I have already stated, satisfied as to the signature; we believe it to be the handwriting of the testator. The paper bears date on the 2d of December, and there is no appearance of any alteration or addition. The date, we think, was obviously written at the same time as the body of the instrument. But the paper is in the handwriting of a legatee, who would take largely under it. It comes also out of his possession, and not out of the possession of the testator, which would have been the proper custody of it after the execution of the paper B. These circumstances, and the conduct of Chadborn in secretly changing the custody, are justly calculated to create suspicion, and according to the rule of the ecclesiastical court in granting probate, proof of the handwriting alone of the alleged testator would not in such a case be sufficient. There must be further corroborative evidence. Is there then such evidence in this case? And if so, is it sufficient, in connexion with the other circumstances, to satisfy the Court that the paper A. is what it purports to be, and that the testator, when he signed and published the paper B., and bequeathed his property to his executors, meant the persons named as such in the paper A?

And, first, it is not immaterial to observe, that Chadborn, Osborn, and Surman, were all present, or at hand, when the will was signed: neither of them, however, attested the execution, but two servants and a stranger, Chadborn's clerk, were called in for that purpose. The inference obviously is, that they were intended to take some benefit under it. There is nothing improbable in the selection of persons named as executors: there is nothing improbable arising out of the amount of the property, as it was subject to be reduced by subsequent legacies, which it is obvious the testator intended to give. In considering the evidence of recognition, I pass over the many loose declarations made at different times in general conversation. We place no reliance upon them—they are even of less value than they might otherwise be, from the insincerity and sort of low-cunning exhibited in the character of the testator. Some point to Chadborn alone as the party to be benefited—but these are open to the explanation, that they were used as an excuse to prevent claims by trustees, and were not really true. Sometimes Alder-

man Wood and Chadborn are said to be the parties to be benefited; and they two are said to be his "executors, and to have the bulk of his property." I allude to the evidence of Mrs. Timbrell. If on that occasion he said that they were to be two of his executors, and to share in the bulk of his property (a very slight change), such declaration would accord with the supposition that paper A. was referred to. It is remarkable that in no instance is any person mentioned as his executor, except some one of the four named in the paper A. There are declarations mentioning Chadborn, or those in the house, namely, Osborn and Surman, as having the management of his affairs; but there are none mentioning any one else as executor or manager except one or more of the four mentioned in paper A. The declarations in favour of other individuals as objects of his bounty, do not affect this question; for they are reconcilable, if true, and really expressive of the deceased's intention, with the supposition, which is undoubtedly correct, that he meant to leave many legacies to others.

But the most important recognitions are those which are proved by Sutton and Stevens, and to which it will be proper more particularly to advert. The first shows a motive for making a will appointing executors arising before the 1st of December—namely, the opinion of the customers as to the necessity of providing for the payment of their accounts. Sutton appears to have been on very friendly and intimate terms with the testator. The testator had at different times expressed to him his dissatisfaction that the deposits at his bank were diminishing; and, in reply, Sutton reminded him that unless the public were satisfied that their balances would be immediately receivable in the event of his death, his banking business must diminish, notwithstanding the security derived from his large property. Sutton says,—"In the afternoon of Monday, the 1st day of December, 1834, I accidentally called at the deceased's, and saw in the shop Mr. Surman, who addressing me said, 'Mr. Sutton, you have a great deal of influence with Mr. Wood, we want him to make a will, and wish you to speak to him about it,' or to that effect. I did not at that time see the deceased, but went away, telling Mr. Surman that I would call again in the evening. Soon after six o'clock the same evening I went to the deceased's, and found him in his parlour and alone. I sat and conversed with him for some time on general topics, until, at length, I opened the subject by saying, that I thought it was time that 'his will was made,' or 'that he made his will.' His reply was very short; he said, 'Ay, ay, I must.' Upon this I dropped the subject, and soon after took my leave." Of the date he says, "I am certain, by reason of a note which I made on the 2d of December, 1830, of the visit. In the course of the same week, and I believe on the 4th of December, 1830, I again called on the deceased, and, going with him into his parlour, I reverted to the subject of making his will, rather, as I believe, hinting

at it, than mentioning it in direct terms. The deceased readily apprehended me, and said, "I have settled my affairs, my debts will be paid when I die." Taking the whole of these conversations together, he must, we think, have meant to convey to Sutton that he had so settled his affairs, that his debts would be paid immediately on his death, which could only be the case if he had appointed executors. His reply on the 1st of December shows that he had not then made his will; he says, "Ay, I must." Three days afterwards, on the 4th, he says, "I have settled my affairs, my debts will be paid when I die," thereby implying that he had appointed executors. The appointment, then, must have been made between the 1st and the 4th, which corresponds precisely with the dates of papers A. and B., and shews that B., not naming executors, must have referred to some other instrument executed between the 1st and the 4th, by which they were named, and which corresponds with and confirms paper A. Sutton adds, that the impression made on his mind by this conversation was too powerful to be forgotten; for it struck him as remarkable that the testator did not say he had made his will, but only "that he had settled his affairs," an expression, the witness says, which struck him forcibly. He afterwards adds, in answer to a further interrogatory put to him by Thomas Helps, that "the impression made on his mind by what the deceased said, namely—"I have settled my affairs, my debts will be paid when I die," was, that he had not made a will, that is, a will by which he had bequeathed his property in the way of bequest or legacy. He seems, therefore, to have understood from this conversation that the deceased had made a will so far only as to secure the payment of his debts in the event of his decease, which implied the appointment of executors; and, accordingly, Sutton continued to bank with the testator to the time of his death. This, we think, materially confirms the case of the appellants.

Wood v. Goodlake, Helps, and others, 16th August, 1841. [To be continued.]

Queen's Bench Practice Court.

EJECTMENT.—JUDGMENT AS IN CASE OF A NONSUIT.—CONSENT RULE.

Where, in ejectment the tenant in possession had appeared and pleaded, his attorney having signed the consent rule, and the lessor of the plaintiff had replied, judgment as in case of a nonsuit may be obtained, although the consent rule has not been drawn up.

Gray shewed cause against a rule for judgment as in case of a nonsuit. It was an action of ejectment, and the consent rule had been signed by the attorney for the defendant; but it had not been signed by the lessor of the plaintiff or his attorney, or drawn up. The tenant appeared and pleaded, and the lessor of the plaintiff had added the *similiter* to the plea. It was now urged that the consent rule not

having been drawn up, the tenant was not properly before the Court, and that the rule should be discharged.

Dickenson, in support of the rule.—The lessor of the plaintiff having replied, and thereby acknowledged the plea of the tenant, the cause was properly before the Court, and the rule would not be discharged, unless a peremptory undertaking was given.

Wightman, J.—I think enough has been done to entitle the defendant to come to the Court. The lessor of the plaintiff must give a peremptory undertaking, and then the rule may be discharged.

Rule accordingly. *Doe, d. Williams v. Smith*, T. T. 1841. Q. B. P. C.

PLEA IN ABATEMENT.—NON-JOINDER.—
AFFIDAVIT.

Quære, whether the affidavit verifying a plea in abatement for non-joinder of a co-defendant, should not state his actual place of residence at the time of swearing the affidavit.

Simons moved for a rule to shew cause why the plea in abatement pleaded in this action, should not be set aside, and why judgment should not be signed as for want of a plea. It was an action of assumpsit, and the plea was in abatement for the non-joinder of a co-defendant, named Watson. The affidavit purported to set out the place of residence of Watson under the provisions of the 3 & 4 W. 4, c. 42, s. 8, but upon application at the house mentioned, it was found that he had ceased to reside there two months, and no further intelligence of him could be obtained. The object of the statute was to afford the plaintiff such information, as would enable him to proceed with certainty, in case of his bringing a new action: but that object was not here attained.

Wightman, J.—I think you may take a rule *nisi*.

Theobald subsequently appeared to shew cause, but intimated that he could not resist the objection, and that an arrangement had been made between the parties.

Rule absolute.—*Wheatley v. Golney*, T. T. 1841. Q. B. P. C.

SERVICE OF RULE OF COURT.—ATTACHMENT.

Service of a rule of Court upon the London agent of a country firm, is sufficient to bring the country attorneys into contempt, where the service has been so effected by their direction and consent; but where the consent was given by one of two partners, held, that the second partner was not bound by it, and was not liable, therefore, to an attachment for disobedience to its terms.

Hugh Hill moved for a rule calling upon two attorneys, partners, residing at Carnarvon, to shew cause why an attachment should not issue against them for disobedience to a rule of Court, requiring them to pay a certain sum of money. The rule had been served upon the London agent of the firm, in obedience to directions received in a letter from one of them.

It was urged, that this was a case in which the necessity for personal service had been dispensed with, and that the Court would, therefore, grant the present rule.

Wightman, J.—Perhaps the service may be sufficient as far as the attorney who wrote the letter, is concerned, but it cannot affect his partner. You may, therefore, take a rule *nisi*, as to the former.

Rule *nisi* granted.—*Re Holiday*, T. T. 1841. Q. B. P. C.

MISCELLANEA.

PAYING OTHER PEOPLE'S DEBTS.

"A collector of the king's taxes not being paid by about six persons while in office, had, to make up his accounts, paid the money for them, and brought them to the Court for repayment.

"The commissioners were surprised, as no cause of this nature had ever come before them, and it seemed of consequence. They inquired how far he was authorized to pay for another? He answered, that he had paid for some at their own request, with a promise to be reimbursed; but in other cases unrequested by the debtor; that it was done out of kindness to them, to prevent a distress, and as the money was paid out of his own pocket, it was reasonable he should have it returned.

"*Court.* All public taxes are debts due from private persons to the Crown; how, highly, then, is this little Court honoured, when our aid is requested to assist the king in recovering his debts! The same honour awaits you, who stand before us as the representative of majesty! Instead of this being a Court of Equity, one would think it a court of falsehood, for unfortunately we can scarcely believe half of what is said to the bench. It is not our business to inquire into motives, but facts; otherwise it might appear doubtful whether the spring of action was their interest, or your own. Though at a transient view all your debts may appear of one aspect, yet upon a close inspection they will be found of two distinct natures. Where the debtor requested you to lay down the money, or promised payment, you have a right to the debt, and we shall award it with pleasure; it was an act of kindness which merits the thanks of the debtor; it was a fair contract between two parties, which we have no right to dissolve. But where you paid without that request, you paid it in your own wrong, and must sustain the loss. To give you such a debt would draw after it a numerous catalogue of evils. It is giving instability to property, taking that power out of those hands where alone it should rest, and conferring it on him who has no right to receive it. No man can pay my money without my consent. If this were allowed, I am no longer my own master; for if he has a right to pay one debt, he has a right to pay any, or even all; and as very few people can instantly answer every demand, without breaking the line they wish to preserve, he brings me to that ruin which prudence can-

not shun—he lays a trap which all my foresight cannot avoid. This liberty, though in the form of a kindness, brings destruction in its rear, and is a liberty one man has no right to take with another. The debtor is the best judge what debts are necessary to be discharged first. As he is the responsible man, he ought to be the acting one. What prudent Court, then, would introduce and license a destructive meddler? If we leave the door open, what mischiefs may not enter! and if admitted, where can we stop them? The master must give way to the intruder, while the secrets of trade, the concerns of the family, and the mysteries of the counting-house, are laid open to view. The law has marked out a road for the collector, by distress, and this road he is obliged to follow; he cannot mark out one for himself.

"At this important trial there were three commissioners upon the bench; two of them were at first, from motives of gratitude, inclined to decide for the collector; but, for the reasons above, we were unanimous for the defendant, consequently the wrath of the collector, and that of his friends, fell upon me. Some who were disinterested approved the decision; but which was right must be left to the world."

GOODS FOUND IN THE STREET.

"A woman accosted me with tears, the most powerful emollients in nature, and observed, with extreme sorrow, that she had lost her needle-book, containing five shillings and sixpence, all she had in the world, in consequence of which her children were starving for bread; that the man who had found it refused to return it, but cursed her, and claimed it for his own; she wished to know whether the Court could relieve her, for if it could not, an abortive suit would add to her loss. I remarked in reply that I had not foresight enough to resolve her question, and if I had, prudence forbade it; that as I should probably be upon the bench, I could not give advice without being myself culpable; that the event of a cause was uncertain, but if she brought it to the Court, the commissioners would do her all the justice in their power; and, were the case my own, I would not tamely submit to the loss.

"At the trial, the defendant boldly supported his claim to the property. He had fairly found it, and every thing a man finds is his own.

"*Court.* And so you apprehend that the street gives a title to whatever lies upon it? You forget that property cannot change its owner without an act of that owner. You can inherit no title but from her, and she has given you none. If you accidentally find a person's title deeds, will it give you a right to the estate? Should a man take up your watch, would you think he had a right to keep it? or rather, would not you hold forth in a different style, and proclaim that power right which obliged him to restore it? It may be generous to reward the finder, but he can demand nothing: neither has the person who wishes to conceal, or refuses to return what he finds, a right to expect a gratuity; we are sorry that if this is your case. A gentleman, some

years back, was travelling in Nottinghamshire, with a servant, who carried a portmanteau, in which was 2000*l.* to pay for an estate. By some accident, it slipped unperceived off the horse. When the loss was discovered, the servant posted back. An old woman, with the portmanteau on her head, whom they had lately passed, exclaimed, "I know what you are galloping after; here is the treasure you have lost, take it and welcome." She was afterwards introduced to "the master, who gave her five guineas. Both parties were pleased; and whenever his affairs led him to Nottingham, he sent for the old woman, and always gave her a kiss and a guinea; each had a different relish, but both were very acceptable.

"An old woman is, unjustly, deemed a despicable character, but how amiable would your's appear could it be placed in the same light. Had you been the fortunate finder, you would have instantly quitted the road, deposited the prize in a ditch, and covered it, as the robin red-breast did the babes of the wood, with leaves, till the darkness of the night should favour the thief to carry off the property of another.

"We shall allow you what you do not deserve—one shilling; make an order against you for the rest, and leave you to reflect how you stand with the world, and how you *might* have stood. Had you sought out the loser, freely returned the property without a fee—for she wanted, and you did not—you would have stood upon honourable ground. You may further reflect, that your *honesty* will never be called in question, for of this you have publicly made shipwreck; your capacity may, for as every loser of a cause pays the fees, you have for twelve paltry pence bartered away seventeen and a character."—[From *Hutton's Court of Requests.*]

THE EDITOR'S LETTER BOX.

We recommend our young friend at Stockport to Roscoe's *Lives of Eminent Lawyers*, and to the series of Biographical Notices which he will find in the *Legal Observer*.

We think W. G. will find by the Poor Law Amendment Act, 4 & 5 W. 4, c. 76, s. 72, that the evidence in question must be "*corroborated* in some material particular by other testimony to the *satisfaction* of the Court."

We presume that the prohibition in a lease of the trades of vintner, victualler, coffee-house keeper, and other obnoxious trades, would include beer shops.

We think "Lector" must be mistaken as to the form of the question he refers to. At which of the examinations was it put?

A Correspondent at Birmingham wishes to be referred to a recent case, in which it was decided that a newly appointed incumbent cannot oblige the executors of his predecessor to make good any want of repairs in a dilapidated parsonage house, in the way of *painting* and *pupering*.

C. J. C. cannot be examined in Hilary Term, without a special rule of court.

The Legal Observer.

SATURDAY, AUGUST 28, 1841.

———“*Quod magis ad nos
Pertinet, et nescire malum est, agitamus.*

HORAT.

THE LAW RELATING TO ABSTRACTS OF TITLE.*

No. I.

THE VERIFICATION OF ABSTRACTS.

It is the duty of the purchaser's solicitor to compare the abstract with the original instruments there abstracted, and he must see that the abstract contains a full and correct statement of them; if he finds them incorrectly or insufficiently abstracted, he should by a rider, or by a correction of the abstract, supply a full and correct statement. The vendor must bear all unusual expenses attending the examination of the abstract. The deeds are usually examined at the residence of the vendor, or at the office of his solicitor, and if such place is situate near the lands, the title of which is abstracted, or the residence of the vendor be well known to the purchaser, the expenses attending the journey of the purchaser's solicitor thither should be borne by the purchaser; but where the place at which the deeds are to be examined is unusual or distant, then the expense of the journey, or the sending a solicitor to such place must be borne by the vendor.^b But a difference obtains in the practice as between town and country solicitors, in their right to charge their clients with the expenses of journeys to examine abstracts. Where the deeds are in London, the country

solicitor must have the abstract examined by his London agent, and cannot charge his client with the expense of a journey up to town for that purpose,^c although he made the journey at the request of his client, if he did not distinctly inform him that it was not usually considered necessary to incur such expense.^d But where the deeds are in the country, the London solicitor is not bound to employ a country solicitor to examine them with the abstract, but may go himself and charge for his journey,^e and when the deeds are in the hands of different persons, residing in various places, the journey thither being an unusual expense, must be borne by the vendor.^f

The vendor is bound to facilitate in any reasonable way the examination and verification of the abstract, and when he covenants to verify the abstract by the production of all necessary deeds in the alternative at one or other of two places, on or before a certain day, he is bound to give notice to the purchaser at which of the two he is ready to proceed with the verification.^g So, where the vendor's solicitor says that all the deeds are in the hands of a third party, and that if it should be required, he would apply for them, the purchaser may refuse to complete if the deeds are not produced.^h When the vendor has a covenant to

^c *Alsop v. Lord Oxford*, 1 Myl. & K. 364.

^d *Ib.*

^e *Hughes v. Wynne*, 8 Sim. 85.

^f *Ib.*

^g *Rippingall v. Lloyd*, 2 Nev. & Man. 410;
See *Sharp v. Page*, 2 Sug. V. & P. 82.

^h *Jarmain v. Egelstone*, 5 C. & P. 172.

* In this series of articles, we propose to collect the cases on various points relating to abstracts of title, down to the present time.

^b *Sharp v. Page*, 2 Sug. V. & P. 82;
ed. 10.

produce the deeds, he must himself obtain them for the inspection of the purchaser, and not leave the purchaser to obtain them himself, which may possibly be refused him.¹ When copyholds are the subject of the abstract, the purchaser is entitled to the production of the copies of court roll, and it would seem from a recent case, that it is usual to require that such court rolls should be stamped.² It is the duty of the purchaser's solicitor to examine and collate the deeds, &c. with the abstract, to see that they have been duly executed and attested, and the proper receipts indorsed, and also to see that the proper stamps have been affixed; and when he has any doubt, to notice the stamps in the margin; but here, if he so please, his responsibility may end. He is not bound to draw conclusions from the deeds, and if he does so, he does it at his peril, for he may throw the responsibility on counsel, and is only bound to give a complete statement of the deeds to enable counsel to form an opinion.³

The solicitor should pay particular attention to the parcels. If the abstract be laid before counsel, this will also be a part of his duty; but as the solicitor has usually some local knowledge of the lands conveyed, it also comes within his province, and it is conceived he would be responsible for any error or mistake in this particular. A solicitor should also see the whole of every instrument, he is not to be content with an extract. He should also see that the facts which are involved on the examination of the title are properly and legally proved, and that they are supported by documents, which will be the best evidence of their truth in a court of justice.⁴

Another point to be noticed is, as to the time at which the verification of the abstract should take place. When it is intended to take the opinion of counsel, and the deeds are distant, and the abstract appears to be properly prepared, it may be convenient to defer the verification until after it has been perused by counsel, and then any inquiries may be answered at the same time; however, as a general rule, it will be better to examine the abstract in the first instance.

Where, after the abstract had been compared with the title-deeds, they were destroyed by fire before the acceptance of the title, the vendor could not obtain spe-

cific performance, as he had no means of furnishing the purchaser with the means of proving the contents of the title-deeds, and that they were duly executed and delivered.⁵

By the conditions of sale the vendor stipulated "to deduce a good title, with certain exceptions therein mentioned, and that he would deliver up to the purchaser of the greater part in value of the said estates all the title-deeds, and copies of deeds, and other documents in his custody, but should not be bound or required to produce any original deed or other documents than those in his possession, and set forth in the abstract, or which relates to other property." Lord Cottenham held, that the vendor was bound to verify the abstract in the usual way.⁶

When the vendor fails to make out a good title, the purchaser may recover all the expences attending the verification of the abstract, whether usual or unusual, and also the expense attending searches for judgments;⁷ but he cannot recover the costs of preparing the conveyance, as he should have insisted on the production of a complete title before preparing the conveyance,⁸ nor the costs preliminary to the contract as commission for negotiating the purchase.⁹

NOTES ON RECENT STATUTES.

9 Geo. 4, c. 31, s. 22.—BIGAMY.

By stat. 1 Jac. 1, c. 11, amended by stat. 9 Geo. 4, c. 31, s. 22, it is enacted, that if any person being married do afterwards marry again, the former husband or wife being alive, whether the second marriage be in England or elsewhere, it is felony, and the offender is liable to transportation for seven years, or imprisonment for two. The act of James made an exception to four cases, in which such second marriage, though in the three first it was void, was yet no felony. 1. Where either party had been continually abroad for seven years, whether the party in England had notice of the others being living or no. 2. Where either of the parties had been absent from the other seven years within this kingdom, and the remaining party had had no knowledge of the other's

¹ *Rippingall v. Lloyd*, 2 Nev. & M. 410.

² *Whitehead v. Jordan*, 2 Y. & Col. 303.

³ *Ireson v. Pearman*, 3 B. & C. 799; *Wilson v. Tucker*, 3 Stark. 154.

⁴ See *Newall v. Smith*, 1 Jac. & W. 263.

⁵ *Bryant v. Bush*, 4 Russ. 1.

⁶ *Squithby v. Hall*, 2 M. & C. 215.

⁷ *Hodges v. Earl of Litchfield*, 1 Bing. N. C. 499.

⁸ *Jarman v. Egelstone*, 5 C. & P. 172.

⁹ *Hodges v. Earl of Litchfield*, *ib. sup.*

being alive within that time. 3. Where there was a divorce or separation *à mensa et thoro* by sentence in the ecclesiastical court. Or, 4, where the first marriage was declared absolutely void by any such sentence, and the parties loosed *à vinculo*. But by the act of George the Fourth, the exceptions are limited to:—1. Where either party hath been continually absent for the space of seven years then last past, and shall not have been known by the other party to be living within that time: and 2. Where there is either a divorce, *à vinculo*, or the former marriage shall have been declared void by a court of competent jurisdiction. There was a fifth exception, which remains unaltered: where either of the parties was under age of consent at the time of the first marriage, for in such case the first marriage, was voidable by the disagreement of either party, which the second marriage very clearly amounted to. But if at the age of consent the parties had agreed to the marriage, which completes the contract, and is indeed the real marriage, and afterwards one of them should marry again, I apprehend that such second marriage would be within the reason and penalties of these acts. Neither of the acts extend to a second marriage contracted out of England by any other than a subject of Her Majesty, s. 4. 4 Blackstone by Stewart, p. 183, 184.

By a very recent case, it would seem that the true construction of the 22d sect. of stat. 9 Geo. 4, c. 31, is this:—not that the party charged to be deprived of the benefit of its provision as a defence must have known at the time when he contracted the said marriage that the first wife had been alive during the seven years preceding, but that to bring him within that provision, he must have been ignorant during the whole of those seven years that she was alive. *Reg. v. Cullen*, 9 C. & P. 691.

3 & 4 W. 4, c. 42, s. 23.—VARIANCE.

The declaration stated that the plaintiff was a Baptist minister, and was retained and employed by the members of a Baptist congregation at Blaenafar, in the county of Monmouth, for gain, to preach the gospel, and that the defendant spoke the following words of the plaintiff: "He is a thief, a swindler, and a forger, and I have letters in my pocket to prove it. I have the letters at Bristol that he is a forger. He stole wood, the property of Francis James;" and the declaration stated as special damage that the plaintiff had been dismissed from his situation as minister. The evidence offered, shewed that the words were spoken by the defendant in the Welsh language, but when translated, the words proved were to

precisely the same effect as those set forth in the declaration. *Ludlow*, Serjt., for the defendant, submitted that this was a fatal variance. The Welsh words should have been set out in the declaration, and also a translation. *Tufourd*, Serjt., applied for leave to amend under s. 23 of 3 & 4 W. 4, c. 42, by inserting the Welsh words in the declaration. The section gives the Court or judge power, where any variance shall appear between the proof and the recital, or setting forth in the record, writ, or document, on which the trial is proceeding, of any contract, custom, prescription, name, or other matter in any particular or particulars in the judgment of the Court or judge not material to the merits of the case, and by which the opposite party cannot have been prejudiced in the conduct of his action, prosecution, or defence, on such terms as to payment of costs, or postponing the trial, or both payment and postponement, as the Court or judge shall think reasonable. Under this section, *Coleridge*, J., allowed the amendment to be made. "I confess," said his Lordship, that I do not think that this goes beyond those amendments which the statute authorizes. The statute provides a remedy if the judge at the trial allows an amendment which ought not to be permitted; but there is no remedy where the judge does not allow the amendment: therefore, in cases of doubt, I would allow the amendment to be made." As to costs on such applications, his Lordship said,—“The provisions of the act of parliament are, that where the variance is not material to the merits of the case, and is one by which the opposite party cannot be prejudiced in the conduct of his action, prosecution, or defence, the record shall be forthwith amended; but where the variance is in some particular not material to the merits, but such as that the opposite party may have been prejudiced in the conduct of his action, prosecution, or defence, the amendment is to be upon payment of costs, withdrawing the record, or postponing the trial, as the judge shall think reasonable. It is under the latter branch of this provision that I here give the plaintiff leave to amend; it is better to postpone the case till to-morrow, and the plaintiff must pay the costs of the day.” *Jenkins v. Phillips*, 9 C. & P. 766. In an action for a libel, the declaration stated that the defendant published a libel “contained in and being an article in a certain weekly printed publication or paper, called the *Paul Pry*.” At the trial it appeared that the defendant gave a printed slip of paper, which appeared to have been cut from the *Paul Pry*, to several persons for them to read, and that they read it; and it was held that the judge might properly allow the record to be amended by striking out the above mentioned allegations, that the libel was contained in, and was an article in the *Paul Pry*; and on an application for a new trial, *Alderson*, B., said, “We think that the declaration was amendable, and ought to be amended. It is just one of the cases where there should be an amendment.” *Foster v. Pointer*, 9 C. & P. 718.

After verdict in an action of ejectment, application was made to amend the declaration by altering the day of demise. "I think," said Coleridge, J., "on considering the terms of the statute, that it does not apply after verdict. The provisions as to withdrawing the record and postponing the trial, all apply to amendments before verdict." *Doe, d. Bennett v. Long*, 9 C. & P. 777.

PARLIAMENTARY PROCEEDINGS.

PARLIAMENT is now in full force, and we shall soon have to record, if we mistake not, a list of legal changes of considerable interest. In the meantime, Sir Edward Sugden has already given notice of a bill for the better administration of justice in the House of Lords and Privy Council. We presume that this is the bill which he brought in, in the last session. If so, we have already expressed our opinion of it; but we shall withhold any further remark until the bill is before us. The necessary measure of reform on these matters, as we have repeatedly shewn, is to establish ONE GENERAL APPEAL COURT, which should sit at certain settled periods, independent of the sittings of the House of Lords; but there will be ample time to discuss this subject in all its bearings.

Mr. Ewart has renewed his efforts to place the Committees of the House of Commons on Private Bills on the same footing as those of the House of Lords, to limit the number of members, and to divest them as far as possible of any direct interest. We cannot see the distinction between a Committee on a Private Bill and any other tribunal, dealing with the property and rights of others. In all other judicial bodies—and it will not be contended that a committee on a private bill is *not* a judicial body—the greatest care is taken to exclude direct interest. It is true this is often taken without success; but, still, the *theory* is to exclude interest. Now, we cannot see why a committee on a private bill should be regulated by other principles. It has frequently to dispose of matters of great importance, of rights to property of great value, of a variety of intricate matters; and as it appears to us, it is highly necessary that the persons who are to decide on these subjects should bring to their decision minds as free from bias as the constitution of human nature and human government will permit. It is for these reasons that we are decidedly in favour of the proposed resolutions.

CONSTRUCTION OF THE NEW BANKRUPT ACT.

2 & 3 VICT. c. 29.

ONE of the acts most important to the commercial world, passed by the legislature for several sessions, is the 2 & 3 VICT. c. 29. The object of it is, among other changes in the bankrupt law, to protect executions *bond fide* executed before the date and issuing of a fiat, notwithstanding an act of bankruptcy may have been committed previous to the execution, provided the execution creditor was unaware of it. This provision is short, and therefore we print it at length.

"Whereas by an act passed in the sixth year of the reign of his late Majesty King George the Fourth, intituled 'An Act to amend the Laws relating to Bankrupts,' it was, among other things, enacted, that all payments really and *bond fide* made by any bankrupt or by any person on his behalf, before the date and issuing of the commission against such bankrupt, to any creditor of such bankrupt, (such payment not being a fraudulent preference of such creditor,) should be deemed valid, notwithstanding any prior act of bankruptcy by such bankrupt committed, and that all payments really and *bond fide* made to any bankrupt before the date and issuing of the commission against such bankrupt should be deemed valid notwithstanding any prior act of bankruptcy committed, and that such creditor should not be liable to refund the same to the assignees of such bankrupt, provided the person so dealing with the bankrupt had not at the time of such payment to such bankrupt notice of any bankruptcy committed: And whereas by an act passed in this present session of Parliament, intituled 'An Act for the better Protection of Purchasers against Judgments, Crown Debts, *Lis Pendens*, and Fiats in Bankruptcy,' it, amongst other things, enacted, that all conveyances by any bankrupt *bond fide* made and executed before the date and issuing of the fiat against such bankrupt shall be valid, notwithstanding any prior act of bankruptcy by him committed, provided the person or persons to whom such bankrupt so conveyed had not at the time of such conveyance notice of any prior act of bankruptcy by him committed: And whereas it is expedient that further protection should be given to persons dealing with bankrupts before the issuing of any fiat against them: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that all contracts, dealings, and transactions by and with any bankrupt really and *bond fide* made and entered into before the date and issuing of the fiat against him, and all executions and attachments against the lands and tenements or goods and chattels of such bank-

rupt, *bona fide* executed or levied before the date and issuing of the fiat shall be deemed to be valid, notwithstanding any prior act of bankruptcy by such bankrupt committed, provided the person or persons so dealing with such bankrupt, or at whose suit or on whose account such execution or attachment shall have issued, had not at the time of such contract, dealing, or transaction, or at the time of executing or levying such execution or attachment, notice of any prior act of bankruptcy by him committed; provided also, that nothing herein contained shall be deemed or taken to give validity to any payment made by any bankrupt being a fraudulent preference of any creditor or creditors of such bankrupt, or to any execution founded on a judgment, on a warrant of attorney, or cognovit, given by any bankrupt by way of such fraudulent preference."

After the passing of this statute several questions arose as to whether it was to be held retrospective, or merely prospective.

In *Edwards v. Lawley*, 8 Dowl. 234; S. C. 6 M. & W. 285; *Nelson v. Scarisbrick*, 8 Dowl. 746; S. C. 6 M. & W. 684; and *Lukin v. Simpson*, 9 Dowl. 296, (s.); it was held retrospective. In none of those cases, however, did the question arise as to the meaning of the expression of "date and issuing" used in the statute. The case of *Peotress and others v. Annan*, which was argued at Serjeant's Inn on a special case by consent of parties before Baron Parke and Baron Alderson, in May last, is most important. It has not appeared in any report. The following was the case on which the argument took place.

"The plaintiffs are wholesale stationers in Gracechurch Street in the city of London. The defendant is a printer residing in Watling Street, London. The defendant being indebted to the plaintiffs in the sum of 639*l*. 8*s*., and being pressed for the payment of it, on the 7th day of December 1840, executed a warrant of attorney, authorizing the plaintiffs to enter up a judgment against him for the sum of 1278*l*. 16*s*., with a defeasance thereon indorsed for payment of the said sum of 639*l*. 8*s*. the debt due to the plaintiffs, with lawful interest on the 7th day of January 1841. The warrant of attorney was duly registered on the 11th day of December 1840. On the 20th day of February, 1841, the defendant became bankrupt by beginning to keep his house with intent to defeat or delay his creditors. On the 8th day of March, 1841, the plaintiffs entered up judgment upon the said warrant of attorney, and sued out a writ of *feri facias*, directed to the sheriffs of London, requiring them to levy upon the goods and chattels of the defendant the sum of 623*l*. 6*s*. 9*d*. due to the said plaintiffs upon the said judgment, with interest thereon at 4*l*. per centum per annum from the 8th day of March, 1841, with 18*s*.

costs of execution, besides poundage, officer's fees, &c. The judgment was so signed between the hours of 11 and 12 o'clock on Monday the 8th day of March, and the writ of *fi. fa.* lodged at the Secondaries' Office in Basinghall Street at 12 o'clock at noon. The warrant on this writ was directed to John Edward Whittle, an officer of the said sheriffs of London, who, at 15 minutes before 2 of the clock in the afternoon of the same day, levied the execution upon defendant's goods, at his house in Watling Street, and left a man in possession. On the same 8th day of March, at 12 o'clock at noon, a docket was struck against the defendant upon the petition of James Battersbee of Croydon, in the county of Surrey, gentleman, and a fiat bespoke and paid for; and in the afternoon of the same day, but after the execution had been levied, the same fiat was called for and obtained from the Bankrupt Office. The fiat is dated the 8th day of March 1841. After the execution had been levied; *viz.* between the hours of 5 and 6 in the afternoon of the same day, a notice was served on the sheriffs, and on the man in possession under the warrant. It is not alleged that the plaintiffs had any previous notice or information of the act of bankruptcy, docket, or fiat. The fiat was opened, and the defendant was duly adjudged a bankrupt upon the said act of bankruptcy on the 9th day of March, 1841; and on the same day one of the messengers of her Majesty's Court of Bankruptcy took possession of the premises of the defendant in Watling Street, and for and on behalf of the assignee of his estate and effects claimed the goods and chattels so seized by the sheriffs as the goods and chattels of the assignee. Alexander Brymer Belcher, and James Battersbee were duly chosen and appointed, and now are the assignees of the estate and effects of the defendant.

On the 18th day of March, 1841, a Judge's summons, requiring the plaintiffs and the assignees of the defendant to show cause why they should not appear and state the nature and particulars of their respective claims to the goods and chattels seized by the sheriffs of London under the writ of *feri facias* issued in this cause, and maintain or relinquish the same, and abide by such order as might be made therein, was attended on behalf of the plaintiffs and the assignees of the defendant, and the sheriffs of London, and the following order was made by the Honorable Mr. Baron Alderson, "that the goods seized under the *feri facias* herein be sold by the said sheriffs, and the money brought into court, deducting the expences of the sale by the said sheriffs, and that then the said sheriffs be discharged. And that if the parties will consent to a special case, let them state it, and if not, that an issue be tried, whether at the time the execution levied, the execution was valid as against the assignees of the defendant; that the assignees be the plaintiffs and the execution creditors defendants.

Dowling appeared for the assignees, and contended that on reference to the language of

the act, and similar words in other statutes *in pari materid*, the execution must have been levied on a day previous to that on which the fiat bore date. That was not the case here, and therefore the assignees were entitled to judgment.

Wiles, on behalf of the execution creditors, contended that for the purpose of the present inquiry, the Court would look to the fraction of a day. If so, then it was quite clear that the execution had been levied before the fiat was obtained from the bankrupt office. If so, it was within the protection of the statute, and the judgment must be in favor of the execution creditor.

Parke, B.—I think the day may be divided into fractions, for the purpose of this act. There was no vested right in the assignees from the 20th February, but merely a contingent right, if they sued out a fiat before the levy at the instance of an execution creditor. Upon this case, as the facts are found, we must assume that the fiat never left the office of bankrupts, which is the Lord Chancellor's office, until after the execution was levied; and the leaving that office must be considered the "date and issuing," within the meaning of this statute. The judgment must therefore be for the execution creditor.

Alderson, B.—I am of the same opinion. All the cases seem to decide that the fiat is not issued until it is taken out of possession of the Lord Chancellor, and here it does not appear that it was taken out of the bankrupt office, which must be considered as the Lord Chancellor's office, until after the execution was levied.

Judgment for the execution creditor.

CHANGES IN THE LAW, IN THE LAST SESSION OF PARLIAMENT. No. XV.

TRIAL OF CONTROVERTED ELECTIONS.

4 & 5 Vict. c. 58.

(Concluded from p. 329.)

67. *Petitions and lists to be referred to the committee, and time and place of meeting to be appointed by the House.*—And be it enacted, that the House shall refer the petitions and lists annexed to the report of the general committee of elections to the select committee so appointed and sworn, and shall order the said select committee to meet at a certain time, to be fixed by the House, which shall be within twenty-four hours of their being sworn at the table of the House, unless a Sunday, Christmas Day, or Good Friday shall intervene; and the place of their meeting shall be some convenient room or place adjacent to the House of Commons, properly prepared for that purpose.

68. *Casting vote in the election of a chairman.*—And be it enacted, that in case there shall ever be occasion for electing a new chairman, on the death or the necessary absence of

the chairman first appointed, the remaining members of the committee shall elect one of themselves to be chairman, and if in that election there shall be an equal number of voices, the member whose name stands foremost in the list of the committee as reported to the House shall have a second or casting vote.

69. *Committee not to adjourn for more than twenty-four hours, without leave, &c.*—And be it enacted, that every such select committee shall sit from day to day, Sunday, Christmas Day, and Good Friday only excepted, and shall never adjourn for a longer time than twenty-four hours, exclusive of such Sunday, Christmas Day, or Good Friday, without leave first obtained from the House, upon motion, and special cause assigned for a longer adjournment; and in case the House shall be sitting at the time to which such select committee is adjourned, then the business of the House shall be stayed, and a motion shall be made for a further adjournment for any time to be fixed by the House: Provided always, that if such select committee shall have occasion to apply or report to the House, and the House shall be then adjourned for more than twenty-four hours, such select committee may also adjourn to the day appointed for the meeting of the House.

70. *Committee-man not to absent himself. Committee not to sit until all be met; on failure of all meeting within one hour, to adjourn.*

71. *Absentees to be directed to attend the House.*

72. *If any committee is reduced to less than six, by the non-attendance of its members, it shall be dissolved, except as herein mentioned.*

73. *Committees to be attended by a shorthand writer.*

The following clauses relate to the powers of the committee, and the conduct of witnesses:—

74. And be it enacted, that every such select committee shall have power to send for persons, papers, and records, and to examine any persons who may have subscribed the petition which such select committee shall have been appointed to try and determine, unless it shall otherwise appear to such committee that such person is an interested witness, and shall examine all the witnesses who come before them upon oath, which oath the clerk attending such select committee is hereby empowered to administer; and if any person summoned by such select committee, or by the warrant of the speaker of the House of Commons, shall disobey such summons, or if any witness before such select committee shall give false evidence, or prevaricate, or shall otherwise misbehave in giving or refusing to give evidence, the chairman of such select committee, by their direction, may at any time during the course of their proceedings report the same to the House, for the interposition of the authority or censure of the House, as the case may require, and may, by a warrant

under his hand directed to the serjeant-at-arms attending the House of Commons or to his deputy or deputies, commit such person (not being a peer of the realm or Lord of Parliament) to the custody of the said serjeant, without bail or mainprize, for any time not exceeding twenty-four hours, if the House shall then be sitting, and if not, then for a time not exceeding twenty-four hours after the hour to which the House shall then be adjourned.

75. *How oaths to be administered.*—And be it enacted, that where in this act any thing is required to be verified on oath to the House of Commons, it shall be lawful for the clerk or clerk assistant of the House of Commons to administer an oath for that purpose, or an affidavit for such purpose may lawfully be sworn before any justice of the peace or Master of the High Court of Chancery.

76. *Giving false evidence to be perjury.*—And be it enacted, that every person who shall wilfully give any false evidence before the House of Commons, or any committee or examiner of recognizances, under the provisions of this act, or who shall wilfully swear falsely in any affidavit authorized by this act to be taken, shall, on conviction thereof, be liable to the penalties of wilful and corrupt perjury.

77. *Evidence to be confined to objections particularized in the list.*—And be it enacted, that no evidence shall be given before the select committee, or before any commission issued by the said committee, against the validity of any vote not included in one of the lists of voters delivered to the general committee as aforesaid, or upon any head of objection to any voter included in any such list other than one of the heads specified against him in such list.

78. *Committee to decide, and to report their decision to the House.*—And be it enacted, that every such select committee shall try the merits of the return or election, or both, and shall determine by a majority of voices whether the petitioners or the sitting members, or either of them, be duly returned or elected; or whether the election be void, or whether a new writ ought to issue, which determination shall be final between the parties to all intents and purposes; and the House, on being informed thereof by the committee, shall order such report to be entered in their journals, and shall give the necessary directions for confirming or altering the return, or for ordering a return to be made, or for issuing a new writ for a new election, or for carrying the said determination into execution, as the case may require.

79. That if any such select committee shall come to any resolution other than the determination above mentioned, they shall, if they think proper, report the same to the House for their opinion, at the same time that they shall inform the House of such determination; and the House may confirm or disagree with such resolution, and make such orders thereon as to them shall seem proper.

80. When committee is deliberating, the room to be cleared, &c.

81. Questions to be decided by majority.

82. Names of members voting for or against any resolution, to be reported to the House.

83. Committees not dissolved by the prorogation of parliament, &c.

The remaining sections apply to *Costs*.

84. That whenever any committee appointed to consider the merits of any petition complaining of an undue election or return, or of the omission to return any member or members to Parliament, shall report to the House with respect to any such petition that the same appeared to them frivolous or vexatious, the party or parties, if any, who shall have appeared before the committee in opposition to such petition, shall be entitled to recover from the person or persons or any of them, who shall have signed such petition, the full costs and expences which such party or parties shall have incurred in opposing the same, such costs and expences to be ascertained in manner herein-after directed.

85. *Costs, when incurred by parties opposing petitions.*—And be it enacted, that whenever such committee shall report to the House, with respect to the opposition made to such petition by any party or parties who shall have appeared before them, that such opposition appeared to be frivolous or vexatious, the person or persons who shall have signed such petition shall be entitled to recover from such party or parties, or any of them, with respect to whom such report shall be made, the full costs and expences which such petitioner or petitioners shall respectively have incurred in prosecuting their petition, such costs and expences to be ascertained in the manner herein-after directed.

86. *Costs, when incurred where no party appears to oppose a petition.*—And be it enacted, that whenever no party shall have appeared before any such committee in opposition to such petition, and such committee shall report to the House, with respect to the election or return, or to the alleged omission of a return, or to the alleged insufficiency of a return complained of in any such petition, that the same appeared to them to be vexatious or corrupt, the person or persons who shall have signed such petition shall be entitled to recover from the sitting member or sitting members (if any) whose election or return shall be complained of in such petition (such sitting member or sitting members not having given notice as aforesaid of his or their intention not to defend the same), or from any other person or persons whom the House shall have admitted or directed to be made a party or parties to oppose such petition, the full costs and expences which such petitioner or petitioners shall have incurred in prosecuting their petition; such costs and expences to be ascertained in the manner herein-after directed:

87. *Costs upon frivolous objections.*—And be it enacted, that if any ground of objection

shall be stated against any voter in any lists of votes intended to be objected to as herein-before provided, and if such select committee shall be of opinion that such objection was frivolous or vexatious, the said committee shall report the same to the House of Commons, together with their opinion on the other matters relating to the said petition, and the opposite party shall in such case be entitled to recover, from the party or parties by whom, or on whose behalf any such objections were made, the full costs and expences incurred by reason of such frivolous or vexatious objections; which costs and expences shall be ascertained and recovered in the same manner and form as is herein-after provided for the recovery of costs and expences in cases of frivolous or vexatious petitions.

88. *Costs upon unfounded allegations.*—And be it enacted, that if either party shall make before the said select committee any specific allegation with regard to the conduct of the other party or his agents, and shall either bring no evidence in support thereof, or such evidence that the committee shall be of opinion that such allegation was made without any reasonable or probable ground, it shall be lawful for the committee to make such orders as to them seem fit for the payment, by the party making such unfounded allegation, to the other party, of all costs and expences which shall have been incurred by reason of such unfounded allegation; which costs and expences shall be ascertained and recovered in the same manner and form as is herein-after provided for the recovery of costs and expences in cases of frivolous and vexatious petitions.

89. *Costs how to be ascertained.*—And be it enacted, that the costs and expences of prosecuting or opposing or preparing to oppose any petition presented under the provisions of this act, and the costs and expences which shall be due and payable to any witness summoned to attend before the examiner of recognizances, or before any committee under the provisions of this act, shall be ascertained in manner following; (that is to say,) on application made to the speaker of the House of Commons by any party, or such petitioner, witness, for ascertaining such costs and expences, not later than three calendar months after the determination of the merits of such petition, or after any order of the House for discharging the order of reference of such petition to the general committee of elections, or after the withdrawal of any petition, as herein-before provided, the speaker shall direct the same to be taxed by the examiner of recognizances; and the said examiner shall examine and tax such costs and expences, and shall report the amount thereof, together with the name of the party or parties liable to pay the same, and the name or names of the party or parties entitled to receive the same, to the speaker, who shall upon application made to him, deliver to the party or parties a certificate, signed by himself, expressing the amount of the costs and expences allowed in such report, with the name of the party liable to pay the same, and the name

of the party entitled to receive the same; and such certificate, so signed by the speaker, shall be conclusive evidence, as well of the amount of such demands as of the title of the several parties to recover the same in all cases and for all purposes whatsoever; and the witness or party claiming under the same, shall upon payment thereof, give a receipt at the foot of such certificate, which shall be a sufficient discharge for the same.

90. *Costs occasioned by delay in appointing the select committee to be taxed off.*—Provided always, and be it enacted, that the examiner of recognizances shall not include in any such taxed costs, any costs which may have been occasioned by delay in the appointment of the select committee, after the examiner of recognizances shall have reported to the speaker whether or not the sureties are unobjectionable.

91. *Persons appointed to tax costs empowered to take affidavits.*—And be it enacted, that the examiner of recognizances is empowered to examine upon oath any witnesses tendered to him for examination, and to receive affidavits sworn before him, or before any master of the High Court of Chancery, or any of her Majesty's justices of the peace, who are severally empowered to take the same, relative to such costs or expences, or the taxation or non-payment thereof, and to administer the oath for taking such affidavit.

92. *Recovery of costs.*—And be it enacted, that it shall be lawful for the party or parties entitled to such taxed costs and expences, or for his, her, or their executors or administrators, to demand the whole amount thereof, so certified as above, from any one or more of the persons herein made liable to the payment thereof in the several cases herein-before mentioned, and in case of non-payment thereof to recover the same by action of debt in any of her Majesty's courts of Record at Westminster or Dublin, or in the Court of Session in Scotland, in which action it shall be sufficient for the plaintiff or plaintiffs to declare that the defendant or defendants is or are indebted to him or them in the sum mentioned in the said certificate; and the said plaintiff or plaintiffs shall, upon filing the said declaration, together with the said certificate and affidavit of such demand as aforesaid, be at liberty to sign judgment as for want of plea by *nil dicat*, and take out execution for the said sum so mentioned in the said certificate together with the costs of the said action, according to due course of Law: Provided always, that the validity of such certificate, the handwriting of the speaker thereunto being duly verified, shall not be called in question in any Court upon the allegation of any matter or thing anterior to the date thereof.

93. *Persons paying costs, may recover a proportion thereof from other persons liable thereto.*—And be it enacted, that in every case it shall be lawful for any person or persons from whom the amount of such costs and expences shall have been so recovered to recover in like manner from the other persons, or any of

them, (if such there shall be,) who are liable to the payment of the same costs, expences, and fees, a proportionate share thereof, according to the number of persons so liable, and according to the extent of the liability of each person.

94. *Recognizances, when to be estreated, &c.*

—And be it enacted, that if any petitioner or petitioners who shall have entered into such recognizance as aforesaid shall neglect or refuse, for the space of seven days after demand to pay to any witness who shall have been summoned on his or their behalf before the examiner of recognizances, or any committee under the provisions of this act, the sums so certified as aforesaid by the speaker to be due to such witness, or if such petitioner or petitioners shall neglect or refuse, for the space of six months after demand, to pay to any party who shall appear in opposition to the said petition the sum so certified by the speaker as aforesaid to be due to such officer or party for their costs or expences, and that such neglect or refusal shall, within one year after the granting of such certificate, be proved to the speaker's satisfaction, by affidavit sworn before any master of the High Court of Chancery (and such Master is hereby authorized to administer such oath, and is authorized and required to certify such affidavit under his hand), in every such case such person or persons shall be held to have made default in his or their said recognizance; and the speaker of the House of Commons shall thereupon certify such recognizance into the Court of Exchequer, and shall also certify that such person or persons have made default therein, and such certificate shall be conclusive evidence of such default; and the recognizance, being so certified, shall have the same effect as if the same were created from a court of law; Provided always that such recognizance and certificate shall in every such case be delivered by the clerk or one of the clerks assistant of the House of Commons into the hands of the Lord Chief Baron of the Exchequer, or of one of the Barons of the Exchequer, or of such officer as shall be appointed by the said Court to receive the same.

95. Returning officer may be sued for neglecting to return any person duly elected.

96. Continuance of act; and of proceedings commenced under it.

No. XVI.

MUNICIPAL CORPORATIONS.—POOR RATE.
4 & 5 Vict. c. 48.

The Municipal Corporations named in Schedules A. & B. of the 6 Wm. 4, c. 76, have been held not liable to be rated to the relief of the poor in respect of lands and tenements, by reason of the income being applicable to public purposes only. The present act directs that the Municipal Corporations named in the said schedules, shall be rateable in respect of lands, tenements, and hereditaments, being the property, and in the occupation of such corpora-

tions. Provided that where such property lies in a parish situate wholly within the boundaries of a city or borough named in the schedules, and in which city or borough the poor are relieved by one entire rate, or were so relieved when the act passed, the exemption of such property shall continue, s. 1. And it is declared that the said Municipal Corporations shall be deemed beneficial occupiers.

No. XVII.

TURNPIKES AND HIGHWAYS.
4 & 5 Vict. c. 51.

This act, reciting the 3 Geo. 4, c. 126, and 5 & 6 Wm. 4, c. 50, enacts that all lands and grounds which shall be in the exclusive occupation of one or more persons, for agricultural purposes, shall be deemed inclosed within the meaning of the above acts, although the same may not be separated from any adjoining lands or grounds of other persons, or from the highway by any fence or other inclosure.

4 & 5 Vict. c. 59.

This act authorizes the justices at special sessions for highways, on proof of the deficiency of the funds of any turnpike trust, to order payment to such trust of a portion of the highway rate; (s. 1.) With power of appeal to the Quarter Sessions, (s. 3.)

No. XVIII.

USURY ON BILLS.
4 & 5 Vict. c. 54.

This act continues the 3 & 4 Vict. c. 83, exempting certain Bills of Exchange and Promissory Notes from the operation of the laws relating to usury, until the 1st January, 1844.

THE STAMP LAWS.

CORRECTING MISTAKES AND EXPLAINING
ALTERATIONS IN DEEDS, &c.

We noticed the new work on the Stamp Laws by Mr. Collins in our last Number, and now add some extracts from the Chapter on the alteration of instruments after they have been executed.

First, of correcting mistakes :—

“ In several cases, where the alteration has been made to rectify a mistake, and to carry into effect what is supposed to have been the original intention of the parties, no new stamp has been held necessary. Thus in *Kershaw v. Cox*, it was held that where a bill of exchange was put into circulation by indorsement, though it wanted the words ‘or order,’ the insertion of these words, there being evidence that the parties intended that it should be a negotiable instrument, with the consent of the parties, did not render a new stamp necessary. *Kershaw v. Cox*, 1801, 3 Esp. 246. And, where the parties by mistake mis-recited

in a bill of sale the certificate of the registry of a ship (which mis-recital, under the 26 G. 3, c. 60, s. 17, rendered the bill of sale a nullity) by stating Guernsey as the port where the certificate was granted, instead of Weymouth; which mistake was rectified when discovered by the consent of all parties, and the deed delivered *de novo*; it was held that no new stamp was necessary. *Cole v. Parkin*, 1810, 12 East, 471. Lord *Ellenborough*, in the course of his judgment, observed:—This defect arose, not from intention, but from mistake. The instrument, as first executed, was not what the parties meant to execute, and it was not in the state in which it was at first intended to be, till it was altered. This is not the case of substituting a new and second contract in the place of a preceding effectual one, upon a change of intention in the parties, but merely making the contract what it was originally intended to have been; and in such a case where the instrument upon its first execution was void to all intents and purposes; where its insufficiency arose from a mere mistake; where, in consequence of that mistake, it was not in the state in which it was intended to have been when it was so executed; and where upon its second execution it is only put into that state in which it was originally intended to have been; we think it is not going beyond the fair spirit of the stamp laws to hold that upon such second execution, being the first which was effectually operative, a new stamp was not requisite.

"In the case of *Cole v. Parkin*, the Court appear to have been influenced by the consideration that the deed, as at first executed, was totally inoperative; but cases are not wanting to show, that, even where the deed may have some operation, still the rectifying of a mistake to make the deed conformable to the original intention of the parties, will not render a new stamp necessary. Thus, where in an action on a policy of insurance it appeared that the first declaration was by mistake on the *Neptunus*, which, as soon as discovered, was rectified by altering the name to the *America*: *Robinson v. Touray*, 1813, 1 M. & S. 215; and where a broker instructed to effect a policy on goods, effected it on ship, and the mistake was afterwards rectified, by the underwriters subscribing a memorandum in the margin: *Swotell v. Loudon*, 1814, 5 Taunt. 359; the alterations in either case was held not to require a fresh stamp.

"In a late case, a promissory note in which the words 'or order' appeared to be interlined, it was admitted on the part of the plaintiff that the interlineation had been made in the note after it had been delivered to the plaintiff by the defendant; but the plaintiff proved that on discovery that the words were omitted, he sent it back to the defendant, who stated 'it is my omission,' and inserted the words. The Court were of opinion that this was sufficient to warrant the jury in finding that the omission was accidental, and that it was supplied in order to carry into effect the original intention of the parties. *Byrom v. Thompson*, 11 A. & E. 31.

"This indulgence, however, is strictly confined to cases of mistake, for, if the alteration appears to have been suggested by an after-thought of the parties, the instrument must have a new stamp. Thus, a promissory note for 100*l.*, payable to the plaintiff or order, and originally expressed to be for value received generally, being altered the next day, upon the suggestion of one of the parties, by the addition of the words 'for the good-will of the lease and trade of Mr. F. K., deceased,' was held to require a new stamp, such words being material, and not having been originally intended to be inserted, and omitted by mistake. *Kell v. Williams*, 10 East, 431. And where an award, under the hand of an umpire, and ready for delivery, pursuant to the terms of reference, of which notice was given to the parties, was altered on the same day as to the sum awarded and re-signed by the umpire it was held that as the alteration was not made to correct a mistake, but in consequence of a change of intention, it was ineffectual, but that (the award being already completed), the award was good for the original sum. *Henfree v. Bromley*, 1805, 6 East, 309.

"There is an early case in which Lord *Ker*, sitting at Nisi Prius, decided that a memorandum on the back of a deed, altering some of the terms of it, did not require a stamp. *Herne v. Hale*, 1801, 3 Esp. 237. His Lordship instanced the case of mortgage deeds, in which it had formerly been customary to make indorsements, altering the rate of interest from five to four per cent.; on which occasion, his Lordship observed, that a new stamp had not been held necessary. In both these instances, however, it is presumed that a new stamp would now be held necessary. Thus, in *Sutton v. Toomer*, where a note for 250*l.* and 3*l.* per cent. interest was after several years altered by consent of the parties to 2*l.* per cent.; it was held, that it was thereby made void, but that it might be given in evidence to show the terms of the original loan. *Sutton v. Toomer*, 7 B. & C. 416; 1 M. & R. 125. And see *Schumann v. Weatherhead*, 1801, 1 East, 537."

Secondly, of explaining alterations in an instrument:—

"Wherever a rasure or interlineation was apparent on the face of the instrument, it was, according to the old rule, presumed to be made before its execution, unless there was proof to the contrary. *Fitzgerald v. Fawcette*, Fitzg. R. 207, *Omnia presumuntur legitime facta, donec probetur in contrarium. Injuria non presumitur*, Co. Litt. 232 b. It is true it has become the practice of late to notice these circumstances in the attestation, but this is only a measure of caution, and cannot affect the rule of evidence before laid down. And the stamp acts do not change rules of evidence. *Doc v. Mee*, 1 N. & M. 424; 4 B. & Ad. 617.

"The Courts of Common Law, however, departed from this rule in respect of bills of exchange and promissory notes, and have required the party tendering an altered bill or note in evidence to explain the cause of the

alteration, and to show distinctly that the alteration was made before it was negotiated; *Johanson v. Duke of Marlborough*, 2 Stark. 313; *Henman v. Dickinson*, 5 Bing. 183; *Bishop v. Chambre*, B. & M. 116; *Taylor v. Moseley*, 6 C. & P. 273; and in a late case the Court decided that a jury cannot, upon the bare inspection of such bill or note, without other proof, decide whether it was altered at the time of making or at a subsequent period. The case alluded to is *Knight v. Clements*: the bill of exchange upon which the action was brought was drawn on a two months' stamp, and had begun with the words 'three months after date'; but the word 'three' had been defaced (as if blotted while the ink was wet), and two written upon it, and two written again underneath, and the plaintiff, who put in the bill at Nisi Prius, offered no evidence to account for these alterations. The learned judge placed the bill in the hands of the jury, and desired them to say whether the alteration had been made before or after it was negotiated, but gave leave to move to enter a nonsuit if the Court should be of opinion that there was no evidence to go to the jury on this point. The jury found that the bill was altered in time; and the plaintiff had a verdict. But the Court were of opinion that the document by itself was no evidence to go to the jury of the alterations having been made in the original writing, and a nonsuit was accordingly entered. *Knight v. Clements*, 1838, 8 Ad. & E. 215; 3 N. & P. 375.

"If an instrument be altered after execution by persons competent to do so, but no new stamp is affixed, and in consequence the instrument is not allowed to be given in evidence, the parties cannot, upon finding the substituted agreement cannot be enforced by reason of an objection arising from the stamp laws, resort to the instrument as it originally stood. *French v. Patten*, 9 East, 351; 1 Campb. 180; *Reed v. Deere*, 7 B. & C. 261."

It will be observed that Mr. Collins's work, from which we have made these extracts, is a very useful one.

LAW OF LIBEL.

[Continued from p. 214.]

"*Intention*.—3dly, As to the intention of the publisher, and the occasion of the publication.

"Assuming this class of offences to be ever so well defined and limited as regards the nature of the injury to be prevented, the acts of composing and publishing that which is so injurious, and its truth or falsity, a most important distinction still remains in relation to the mind and intention of the composer or publisher. A criminal intention, or at least a state of criminal indifference as to consequences, is usually an essential test of guilt. But in ordinary cases the guilty state of mind is required to be evidenced by acts or circumstances essential to the offence, which are

usually indicative of the guilty intention. In respect of the present class of offences a more than ordinary difficulty occurs as to intention; for whilst the intention is most peculiarly the test of criminality, the mere acts essential to the offence, such as composing, writing, printing, or otherwise publishing, are of no use as tests of guilt. And although the very contents of the writing published may often afford very strong evidence of intention, it frequently happens that they are inconclusive, and that the inquiry as to intention requires light from collateral circumstances.

"*Excuse.—Ignorance*.—Ignorance of the contents of the matter published by a party, or to the publication of which he was instrumental, must in principle be regarded as a sufficient legal excuse, provided the want of knowledge be not in itself wilful, with a view to impunity, or otherwise culpable. In such cases the total absence of all criminal design or neglect ought to exempt from penal consequences.

"As regards the main distinctions, it is not difficult to conclude that every legal code must in respect of this branch of the law recognise three distinct classes of cases in reference to the intention of one who publishes that which is injurious. These distinctions, it will be seen, are necessary ones, arising out of the very nature of the facts themselves to which legal principles are to be applied.

"The 1st comprises those where the intention must be regarded as immaterial.

"The 2nd, those where the offence depends upon the real motive of the offender, and where it lies on the prosecutor to prove actual malice.

"The 3rd, those where an evil motive is to be presumed from a noxious act unexplained, and where it lies on the party charged to rebut the implication of malice.

"In the first place, exemption from penal liability must in many instances be expedient without regard either to the injurious quality of the communication, or the motive of the party who made it. It would obviously be attended with great mischief to allow a judge to be responsible, either civilly or criminally, for anything which he had published in the course of his official duty; the effect is precisely the same, whether his non-responsibility were to be referred at once to the real principle of expediency, or attributed to one more technical, viz., that the occasion of the publication conclusively repelled the presumption of malice.

"To allow a party to be subject to a prosecution for matter sworn or deposited to in the course of a judicial inquiry, would be manifestly inexpedient, if not unjust. This would necessarily operate to discourage the attendance of witnesses, and the free delivery of their testimony, and it would be attended with frequent hardship, that a witness should be subject to a prosecution in respect of testimony which he could not withhold without incurring punishment as for a contempt or committing perjury.

"In the next place, it must be necessary under every legal system to recognise a numerous class of cases where the illegal quality of the act depends upon the actual intention of the party. This happens where the occasion and circumstances of the publication are such as ought to justify one who acted *bona fide*, but ought not to protect one who acted out of mere malice. In such cases it would be inexpedient either to give no protecting effect to such an occasion and circumstances, or to give them a conclusive effect. Were a charge of dishonesty to be made in giving the character of a servant, common convenience requires that such a communication, if made *bona fide* should be privileged; no one would be willing to answer inquiries as to character, were it to be done at the hazard of a prosecution: but it would, on the other hand, be unjust and oppressive that a malicious injury should be committed to the destruction of a man's reputation under the cloak of answering an application as to his character. The only just course in such a case consists in privileging such a communication, when it is made *bona fide*, but in affording no protection where it is made maliciously, and the occasion is used but as a colour. Within this general principle are naturally comprehended all communications made in the *bona fide* prosecution of any legitimate object in which either party has an interest; a narrower rule would be inconvenient, in limiting too much that freedom of communication and intercourse which is useful to society; a more extensive protection would encourage malicious attacks on reputation, without any adequate reason.

"As in this class of cases the quality of the act is to depend on the existence or absence of malice, the occasion itself warrants a legal presumption in favour of the party who professes to act upon it, and it naturally lies on the prosecutor to prove the evil intention.

"There necessarily exists a third class of cases, including all which do not fall within either of the two preceding, that is, where the communication is not privileged either absolutely or *sub modo*; in which case if the matter published be in its own nature, or in reference to known circumstances, injurious and noxious, it must, if wilfully made, be attributable either to an actual malicious intention, or, which must in legal contemplation be deemed equivalent, to a criminal disregard of consequences. In all such cases the offender must be considered to have acted either of malice in fact, that is, from a motive of actual ill will and a design to injure, or of malice in law, which consists in the wilful doing of a prohibited or injurious act without lawful excuse. It seems, on the one hand, that a mere wicked and mischievous intention, unless it be conjoined with some publication of noxious and illegal matter, cannot amount to an illegal communication. If a man intending to publish a most atrocious libel, were by mistake to deliver the gospel instead of the book in which the libel was contained, though, in a moral point of view his guilt would be just the same as if he had

published the libel; yet he would have committed no crime against the law, unless that law took cognizance of mere abstract intention, unaccompanied by any definite criminal act. On the other hand, it appears to be equally manifest that where any act is by law defined to be illegal and criminal, every one is punishable who voluntarily does the prohibited act, without some legal justification or excuse, furnished by the occasion and circumstances, and without regard to his real motive and intention. To hold that a man should be absolved from penal responsibility merely because his motives were benevolent, would be to set private opinion above the law. For the same reason, it is plain that mere abstract intention and motive, where the act is voluntary, cannot, without reference to the occasion and circumstances of the communication, constitute any justification or excuse which the law can safely recognise. These distinctions concerning intention are therefore inherent in the subject matter; they are common to all times and to all countries, and can never, without inconvenience, be disregarded by the legislature.

"What cases shall be included within the first, and what within the second class, are however questions upon which legislators may differ, and upon which a great variety of opinions has been entertained.

"As connected with the present subject, it may not be improper to remark in this place, that where the criminal quality of the particular transaction turns upon the actual intention of the party making the publication, the truth or falsity of the alleged libel furnishes a most important, not unfrequently a decisive test, for determining that quality. The offender's knowledge that what he published was false, must usually be absolutely conclusive upon the question of malice; on the other hand, proof that what he published he knew to be true, although not absolutely conclusive as to the fact, cannot but be regarded as a strong indication of sincerity in a doubtful case, where the act is capable of being referred to an innocent and proper motive, suggested by the circumstances of the particular transaction.

[To be continued.]

SELECTIONS FROM CORRESPONDENCE.

THE EXAMINATION.

To the Editor of the *Legal Observer*.
Sir,

You are aware, no doubt, that amongst country solicitors, nearly all that is known about Chancery is the *principles or theory*, and that the practical part of a suit is left almost entirely to the "skill and judgment" of the agent. Now would a candidate for admission pass his examination, supposing his answers in that department to be but "*so so*," or even *bad*, but in the four other branches to be *highly satisfactory*? A notion seems to prevail hereabout that the Chancery answers are scrutinised more severely than any other.

SUPERIOR COURTS.

Judicial Committee of the Privy Council.

WILL.—DETACHED PAPERS.—CODICIL.—CAN-
CELLATION.

A testator, by a paper called "Instructions for his will," appointed four persons executors, and desired them to take possession of and retain his personal estate, subject to his debts and such legacies as he might direct; and as to his real estate to such persons as he should direct. By another paper, dated the next day, he directed that all his estates, real and personal, should go amongst his executors and their heirs in equal proportions, subject to his debts and legacies. The names of the executors were not repeated in the second paper. Both papers were signed by the testator. Held, that the two papers might be taken together as the will of the testator.

A codicil, sent anonymously by the post to one of the legatees, was nearly torn through in two places, and part of it burnt off: Held not to be cancelled.

(Concluded from p. 334, ante.)

The evidence of Stevens, upon which considerable stress has been laid, also appears to us to be entitled to much attention. He and his father had cash deposits in the hands of the testator to the amount of upwards of 2000*l*. They were desirous of knowing what the testator had done as to his will, as they might be put to much inconvenience respecting this balance in the event of his dying intestate. The witness was empowered and directed by his father to withdraw the balance unless the explanation should be satisfactory. Upon the application made by Stevens to the testator, he said, "I respect your father very highly; do tell him that I have made a will, and that I have left my property to four individuals, or four good men, and they are my executors, and they will pay you and your father, and every one else." Speaking of the executors, he said, "Two of them are Alderman Wood and Jacob,"—that is Osborn. Upon this assurance the witness said he continued to bank with the testator. This took place in the month of September, 1835. It was not a loose and careless conversation; but, on the contrary, a very distinct recognition—very deliberately made in the course of business, and is strongly confirmatory of the case of the appellants.

The answer of Mrs. Goodlake has been referred to. We think it admissible, though under all the circumstances of her position, and in the absence of any opportunity for cross-examination, we should not, if it stood by itself, consider it as having much weight. She was alone with the testator for a considerable time in the forenoon of the Monday before his death, having been sent for in consequence of his illness. Mrs. Goodlake, on that occasion, spoke to him about the propriety of making his will, when the testator, in allusion, as she believed, to her various suggestions on this subject, after tracing his relationship to the

It seems to me next to an impossibility to attain a thorough knowledge of "Practice," without *actual experience*, which is frequently (in my case) out of the power of an articulated clerk. A clerk may learn *theory* or *principles* of law, as there is generally something like reason to ground decisions upon. As my examination is very near, these questions concern me much, and therefore, your answer would greatly oblige, Sir,

"A Stockport stripling, training for the law;
"A dunce at Blackstone, but a dab at law."

[There are some parts of the practice or mode of proceeding in Courts of Equity, that are essential to be known by the country solicitor, but we presume that accurate information on the technical details which belong exclusively to London practice will not be required. No doubt the "highly satisfactory" answers in the four other branches will have great weight.—ED.]

MORTGAGE STAMP.

A. being seised in fee of certain copyhold hereditaments, mortgages them to *B*. Default being made in payment of the mortgage money, *A.*, with the concurrence of the mortgagee, surrenders the estate, subject to the conditional surrender of *B*. to *C.* in fee, upon trust for sale. *C.*, the trustee, is admitted on this surrender. The mortgage-money being considerably more than the value of the estate, the mortgagor agrees to pay the mortgagee the sum of 1000*l*. in full discharge of the mortgage. *C.*, the trustee, by direction of the mortgagee, surrenders the estate to the mortgagor.

Is an *ad valorem* duty payable on the surrender to the mortgagor; or the consideration money being applied in discharge of the mortgage, is the common deed-stamp sufficient?

A SUBSCRIBER.

ATTORNEY'S CERTIFICATE DUTY.

Perhaps no persons neglect their own interests so much as attorneys. How long, I would ask, will they suffer the certificate duty to continue? I say *they*, because I am satisfied it is owing to their own lukewarmness that they remain subject to this unjust impost, for as long as they will quietly pay the money, it will be quietly received. If, (as we all maintain is the case), the certificate tax is an unjust one, it ought to be repealed, and if the revenue is affected by the repeal, let the deficiency be made up by some other proper means. Why are attorneys to be subject to an annual tax, while all other professions and businesses are free? To present, however, a repeal petition to the legislature, and then let the matter fall to the ground, is to do nothing—the question ought to be taken earnestly in hand, and continued in hand, incessantly, until the tax is removed.

AN ATTORNEY.

respondent and her son, and speaking of the uncle of the respondent, who had been a trustee under the will of the testator's father, "Cousin John," he said, "was a very good kind man; then I shan't live long; it will be all right by-and-by;" or to that effect: and the testator, proceeding to speak about his will, said, "Don't fret yourself to fiddle-strings; Alderman Wood will spend the money very properly. Chadborn has done all my business many years, and he has been very honest and attentive. Mr. Osborn has been a very faithful servant, and our John I always loved. He always was a great favourite of mine; he knows all about it, and can tell you all about it." This is also confirmatory of the written documents, and, if correct, shews that the four persons named in the paper A. were objects of the testator's bounty. It appears singular, indeed, that Surman had not made any communication to his mother, Mrs. Goodlake, on the subject of the will, and yet he certainly was present when it was signed and published by the testator.

The result then is this:—We are of opinion that the paper A., entitled "Instructions," was signed by the testator, and on the day it bears date. That in the paper B. the testator referred to these instructions, and to the persons whom he had therein named as his executors. That, in addition to the proof of handwriting, there is sufficient confirmatory evidence to satisfy us that the paper A. was the act of the testator, and that he meant, in mentioning his executors in paper B., the executors whom he had previously named or appointed in the paper A.

We must not be understood to say that this is a case free from doubt; we consider, on the contrary, that it is involved in difficulty, and that it is in many of its circumstances painfully obscure. But, after much and attentive consideration, we think the balance of evidence, and by that we must be governed, is in favour of the appellants. An objection of form was taken at the bar, but was not, I think, much pressed—viz., that there was a material variance between the allegation and the proof. We think the objection cannot be sustained. If enough of the allegation is proved to entitle the party to probate, that is all that is necessary.

Next as to the *codicil*, we think it is (both the body of the instrument and the signature) in the handwriting of the testator. The evidence in the affirmative so greatly outweighs that which is opposed to it as to satisfy us on this point. That evidence has been so thoroughly sifted, both at the bar and by the learned Judge in the Court below, as to render any further examination of it unnecessary. It derives further strength and confirmation from the conduct of the executors. They were intimately acquainted with the handwriting of the testator, and with every thing relating to him. They saw the *codicil*, and expressed no doubt as to its genuineness. It is true, that the letter of the 18th of June, to the mayor of Gloucester, was written before they had

seen the original; but they afterwards saw and examined it, long before the post left London on that day. They made no objection, and in the subsequent letter, and in the search for the other *codicil*, they acted upon it as if it were a genuine instrument. It was not till some time afterwards that they altered their course, and treated it as a forgery. But, according to the rule of practice to which I have before adverted, the ecclesiastical court will not grant probate on the sole evidence of the handwriting of a testator, where that is disputed. There must be some confirmatory proof. This confirmatory proof must evidently vary with each particular case; and would require to be more or less stringent according to the weakness or strength of the evidence as to the handwriting. In some of the cases referred to in the arguments at the bar, the confirmatory proof appears to have been very slight. We think, however, that there are in this case, in addition to the very strong evidence of handwriting, several circumstances, leaving, in the result, no doubt on our minds that the *codicil* was the act of the testator. It is evident that he had it in contemplation to make a *codicil* or *codicils* to his will. This appears as well from the will itself, as from the question put by him to Chadborn at the time of executing it. It is not, indeed, probable that he would have left so very large a property to be enjoyed solely by his executors. There is nothing in the dispositions which it contains to lead us to doubt the genuineness of the instrument; and if it does not notice every person who might naturally have been an object of his bounty, this may be explained by the circumstance of there having been a previous *codicil*, to which this instrument refers. Several facts insisted upon to show that the paper was a forgery tend strongly, upon investigation, to prove that it is the act of the testator; as an instance, I refer to the incorrectness respecting the name of counsel. It is not probable that a person forging such an instrument would have misspelt it, particularly a person who must from the nature of the dispositions, obviously have been well acquainted with the testator and his connexions. So as to the use of figures instead of words in stating the sums bequeathed to the legatees. A forger would have conformed to the usual practice of the testator. Again: stress was laid upon the peculiar manner in which the *s* was formed in the word "executors." It is a mere cress, whereas his usual practice was to make an *s*, and then to cross that letter. But on a careful search, instances have been found among the books and papers of the testator, and which were, as the learned Judge observes, very reluctantly produced, of similar deviations from his usual practice, and also of the same inaccuracy in spelling the name of counsel. These are singular and striking coincidences, and there are others of a similar nature, strongly confirmatory of the evidence of the handwriting. It is true that these are minute circumstances, but their very minuteness, we think, adds to their importance, and affords

the strongest internal evidence of the genuineness of the instrument. It has been observed, and we think justly, that it is not at all probable that a person forging such an instrument would have referred to a former codicil, and thereby unnecessarily increased the means of detection. The very amount, too, of the legacies, and, above all, the charges against the executors, would almost of necessity lead to opposition. Looking, too, at the different dispositions in the codicil, it is almost impossible to suppose that if the instrument had been a forgery it would not have been detected by some inaccuracy or exposed by some inconsistency. There are other circumstances of confirmation which are not immaterial. It is proved that the testator had by a former will bequeathed a sum of 20,000*l.* to the city of Gloucester. This was at a period when his circumstances were very different from what they were at the date of the codicil. He had in the interval received large accessions to his property; but unless the codicil be genuine, there is no bequest to the city. In a conversation with Hopkins, in February, 1836, after the date of the codicil, and in the presence of several persons whose names are given, the testator, in allusion to some suggestion made by the witness, stated that he had not forgotten "Old Gloucester," or "Poor old Gloucester." And this corresponds with the evidence of Elizabeth Whalley, who states that on a former occasion he had said "he would do great things for old Gloucester." It is stated, indeed, that he sometimes declared that the corporation should not be the better for him; but his declarations in favour of the city, and particularly that to Hopkins, made after the date of the codicil, agree with the documentary proof, and confirm it. Again, in the codicil there is a bequest to a relation, Samuel Wood, of 14,000*l.*, and to his family of 6000*l.* He had, in fact, six children; the 6000*l.* and the 14,000*l.* make 20,000*l.* He had given the same sum (20,000*l.*) in each of the two preceding bequests to two other relations, Mrs. Goodlake and Thomas Wood. Now, it appears that in a conversation with Samuel Wood, the testator had asked him how many children he had, and the form of this bequest appears to be the result of that conversation, and corresponds with it. These circumstances, more or less weighty, and in particular the internal evidence to which I have referred, are in confirmation of the codicil, and, added to what we consider as the all but conclusive evidence as to the handwriting of this holograph instrument, satisfy us that the codicil was the act of the testator.

But then it comes, nobody knows whence or from whom. It was sent anonymously to one of the parties claiming under it. This is a circumstance justly calculated to create suspicion, and would under ordinary circumstances have been a most material and formidable objection. But the evidence in this case leads to the conclusion that the papers of the testator have been improperly dealt with. It is proved, as we think, satisfactorily that Chadborn, who had committed, or attempted a

fraud, in the annexation of the papers A. and B., was in the house of the testator at an early hour on the day after his death, while Osborn and Surman were still in bed. The explanation is insufficient, and at variance with the proof. It is admitted that papers were burnt, and one of them probably of a testamentary character. These circumstances appear to us greatly to weaken the force of the objection. Adverting here again to the charge against the executors, would a person forging such an instrument have made such a charge? On what grounds? It was not known at the time when the codicil was produced that papers had been burnt; that there had been anything irregular in the conduct of the parties. They were respectable in station and character. But the misconduct and burning are charged, and it turns out most unexpectedly to be true. The person, therefore, who produced this paper must have had some knowledge of these transactions—some connexion with them; and this explains the possession of the codicil, and shows why it was not produced from the repositories of the testator.

Then as to the alleged cancellation. We think, if this be a genuine instrument, that the *onus* to make out the fact of cancellation is on those who oppose the codicil. It seems that a corner has been burnt, the paper torn through, and in one place across the signature; but by whom, and under what circumstances, does not appear. There is nothing whatever to show that it was done by the testator, or, if so, with what intention it was done. If it be a genuine instrument, it proves that there was also another codicil, and which is not forthcoming. It is obvious, we think, that it must have been improperly dealt with, for if it was defaced by the testator, he would either have entirely destroyed it, or it would have been found in this state among his papers. The circumstance of its being in other hands shows that a fraud has been practised, and that no safe conclusion can be drawn from its appearance that it was burnt or torn by the testator. But even if it had been found among the testator's papers at the time of his death, we incline to think some further evidence, beyond its present appearance, would be necessary to shew that he intended to cancel it. Our opinion, therefore, is, that the codicil ought to be proved.

Another question remains: the question of costs. We think it reasonable and proper in this case that the costs of all the parties, as well here upon the appeal as in the court below, should be paid out of the estate.

Wood v. Goodlake, Helps, and others, 16th Aug. 1841.

Queen's Bench.

[Before the four Judges.]

BIRTH.—REGISTRATION ACT.

Where a registrar of births had been imposed on by a fraudulent statement, and had made an entry on the register which was subse-

quently proved to be false, this Court, though desirous of interfering to prevent the fraud, held that it had no power, under the statute 6 & 7 W. 4, c. 86, to issue a mandamus to the registrar to alter the register, or to make an entry in the margin correcting the original entry.

Mr. Thesiger applied for a rule to shew cause why a mandamus should not issue to the superintendent registrar of births in Brixton, commanding him to erase from the register an entry recording the birth of a child, now described there as being born in February last, and being the lawful son of two married persons therein named, or directing him to enter in the margin of the register a statement that he had made such entry in the register upon a fraudulent representation. The affidavit shewed that the pretended mother of the child was not in fact its mother, and that she had borrowed the child of a relation, and had presented herself with this borrowed child to the registrar, and had fraudulently described it as her own; that she had been assisted in this fraud by some persons who, subsequently becoming alarmed at the enquiries made into the matter, had given information which led to the complete detection of the fraud, and which shewed how the registrar had been imposed on. In support of the application it was contended that if the entry was not erased, or another entry made in the margin, the record or registry of births kept under the authority of the statute 6 & 7 W. 4, c. 86, would state that which was false; that to prevent such a consequence this Court would interfere by virtue of its summary power, and that it was bound to do so in order fully to carry into effect the intentions of the legislature, which had been by means of this public registry to ensure a perfect and true statement of the births of the subjects of the kingdom. The duty of making the statement to the registrar was compulsory; the making a false statement subjected the party making it to the penalty of perjury (s. 41); and it was clear, therefore, that the law desired to do everything to keep the registry perfectly free from fraudulent statements, and even from inaccuracies.

Lord Denman, C. J.—The Court will most certainly do what is now asked if it possesses the power; but we doubt whether the statute has been so framed as to meet a case of this kind. The provision to correct errors is contained in the 44th section, and that speaks only of errors committed in the form or substance of the entry, for which the registrar is not to be liable to a penalty, if within one calendar month he, in the presence of certain persons therein named, among whom are the parents of the child, shall correct the same by an entry in the margin. That provision does not seem to meet the present case. But we will not refuse the rule now, but will consider it, and state our opinion in a day or two.

Cur. adv. vult.

Lord Denman, C. J., afterwards said, we found that the facts of this case were such as

to make us desirous of interposing to prevent what appears to be an attempt to commit a gross fraud by the parties who had set the registrar in motion; but we think, upon full consideration of the matter, that we have not, under the statute, the power to interfere in the way prayed.

Rule refused.—*The Queen v. The Superintendent Registrar of Births in Brixton*, T. T. 1841. Q. B. F. J.

Queen's Bench Practice Court.

STAMPING AFFIDAVIT.—APPLICATION OF ATTORNEY TO BE STRUCK OFF THE ROLL.

The affidavit of an attorney in support of an application made by him, that he be struck off the roll, must be stamped.

Warren moved, on behalf of Mr. Watkins, an attorney of this Court, that he be struck off the roll. The affidavit in support of the motion was not stamped, but a question arose whether it was not necessary that it should be stamped, under the provisions of the statutes 55 Geo. 3, c. 184, and 5 Geo. 4, c. 41, after the decision in the case *Re Templeman and Reed*.

Per Curiam—Such an affidavit has been always required to be stamped.

Motion refused.—*Ex parte Watkins*, T. T. 1841. Q. B. F. C.

THE EDITOR'S LETTER BOX.

Our Birmingham correspondent, mentioned at p. 336, *ante*, is referred to *Wise v. Metcalf*, 5 Man. & R. 235.

Information for the *Legal Almanac*, *Remembrancer*, and *Diary*, of 1842, should be sent early next month. Some alterations and additions are intended in the contents of the work; but the ordinary lists, which are found in every pocket book, can scarcely be necessary in a book intended peculiarly for the legal practitioner, although as a *Diary* it may suit the convenience of any one.

We agree with a correspondent (whose letter we have inserted) that the subject of the Repeal of the Attorneys' Annual Certificate duty should be constantly "agitated." We are willing to lend all the aid in our power to promote so just an object.

The series of "Points of Practice" in the form of Question and Answer, shall be continued as suggested; but we are not aware that they would be acceptable every week.

A correspondent at Bristol is informed that the usual number of years' purchase for a legal partnership is *three*.

The several statutes in the present number, with two, which shall be inserted in our next, will close the acts of the last session, so far as they effected any material change in the law.

The Legal Observer.

MONTHLY RECORD FOR AUGUST, 1841.

—“Quod magis ad nos
Pertinet, et nescire malum est, agitamus.”

HORAT.

EFFECT OF THE PARTIAL REPEAL OF THE USURY LAWS.

THE Special Committee of the House of Commons on the Usury Laws have reported the evidence taken before them on the effect of the partial repeal of those laws. The statutes are 3 & 4 W. 4, c. 98;^a 7 W. 4, & 1 Vict. c. 80;^b 2 & 3 Vict. c. 37,^c continued by 3 & 4 Vict. c. 83,^d and 4 & 5 Vict. c. 54. The first of those acts repealed all restriction on the rate of interest on bills not having more than *three* months to run; the second extended the repeal to bills not exceeding *twelve* months, and the third act (2 & 3 Vict. c. 37,) further enlarged the repeal to *contracts* for the loan or forbearance of money above 10%. (without limitation of time); but provided that the act should not extend to securities on lands, tenements, or hereditaments, or any estate or interest therein.

The following witnesses have been examined by the committee:—George Warde Norman, one of the Bank Directors; Samuel Jones Loyd, George Carr Glynn, and Sir J. W. Lubbock, bankers, and Samuel Gurney, a bill broker. All these gentlemen are in favor of the relaxation of the Usury Laws. James Cook, a produce broker in the East and West India trade, is against the change. James William

Freshfield, jun., and Joseph Maynard, solicitors, differ in opinion; and George John Graham, one of the official assignees, seems not very positive in his evidence on either side.

The conflict of opinion seems to arise from one class of witnesses grounding their conclusions on the effect of the repeal upon the *first rate* merchants; and the other upon the consequences which have fallen on the *larger* and humbler class of commercial and trading persons. There seems to be no doubt that all the *lenders* of money have been benefited by the change, and, consequently, bankers and bill brokers naturally lean to that side of the question. It appears also, that Mr. Freshfield, jun., the Bank Solicitor, was influenced by his knowledge of the good effects which had, no doubt, resulted to his first-rate class of clients. The evidence of Mr. Maynard and Mr. Cook bears more on the result of the change upon the great body of traders—and unquestionably their interests ought to be consulted in considering the question.

If it can be established, by sufficient evidence, that money cannot be obtained for commercial purposes at *five* per cent., then, we think, the rate should be raised to *six*, or such other fixed amount as may be necessary; but that it should not be *unlimited*. We refer our readers to the following extracts from the evidence, as worthy of very serious consideration.

We observe that Sir E. Sugden has given notice of a motion on this subject.

^a 7 L. O. 52.

^b 14 L. O. 349.

^c 18 L. O. 280.

^d 20 L. O. 438.

Mr. Maynard's Evidence.

375. Will you state to the committee what, in your opinion, has been the operation upon the general condition of persons, engaged in commerce in the city of London, of the alteration made in the laws regulating the interest of money; what are called the Usury Laws?

I think the operation has been different upon different classes of men engaged in trade in the city. Amongst what I should call the higher class of mercantile men, who have access to the best resources for raising money, and who have always unquestionable security to offer for it, my opinion would be, that the working of it had been beneficial, as enabling them to avoid the sacrifice of property at times when it is depreciated in the market. They, by being enabled to give a rate of interest worth the while of persons having money to lend, which the ordinary rate I think was not, have been enabled to obtain resources when they very much needed them in times of commercial distress and difficulty, and have been spared a very much larger sacrifice, by not being compelled to bring their property into the market, as they would have been in former times when they had no alternative but to sell their property for what it would fetch.

376. In speaking of that class of persons, you speak both of those that have money to lend and those that want to borrow money?

As to the parties that have money to lend, I think there can be no question as to its having been beneficial to them; and I think there is no question as to its having been beneficial to the other class of persons to whom I alluded.

377. How do you consider that it has operated upon a second class of persons—persons not absolutely in needy circumstances, but below what you would call the higher class of merchants?

With regard to that class of persons, there have been a great many instances in which I have found that, there being no limit to the rate of interest, and they not having that station or credit, to which I have alluded in my former answer, they have been obliged to pay a much higher rate of interest than what I should call the value of money at the time at all called upon them to pay; and then, I should say, it has had this prejudicial effect, in many cases in that class, that every man wishing to keep himself up as long as he can, I have found that when at last they were compelled to suspend their payments, and declare themselves in a state of insolvency, their assets have been all but exhausted.

378. The operation of the present state of the law upon that class has been, that they have gone on longer by borrowing at a high rate of interest, than under the former state of the law they would have done, and consequently when they have come to insolvency, their funds have been pretty much exhausted?

I think so: I think under the former state of the law there was a class of persons who could not, without decidedly endangering their credit, and by that means being compelled to come to a suspension, have forced their goods

into the market in the way in which they would have been compelled to do to obtain funds; whereas, through the medium of parties who intervene between the capitalist and the borrower, the money-brokers, they may get their money upon security, or upon the best bills they are enabled to give, without its being known among their connexions. If they were compelled to force into the market goods, which, in the ordinary course, ought not to be sold in that way, that could only be done, generally speaking, amongst persons dealing in those goods, and the chances are that it would become known, and then they would be compelled to bring their affairs to a close; whereas, at present, they are enabled to go on much longer, and I think detrimentally to their general creditors.

379. Do you not consider that the greater mass of business that is carried on in the city, is carried on by that class which you would describe as something below that of the first credit?

My own feeling would be, that in figures it would not be so; numerically speaking, with regard to the number of persons engaged in it, the larger number of persons I should think would be amongst what I should call the inferior class of dealers, but the greater amount of financial operations, I should think, would be the other way.

380. Does your experience enable you to state at what rate of interest persons of the class that you have been speaking of have borrowed their money?

It does, in a great many instances; and perhaps I should state, that a mode has obtained, which I think is to be attributed to a repeal of the Usury Law, of charging *ad libitum* almost, a commission upon the raising of money, which is not called interest, but it is called commission, but still to the party borrowing, it is in effect paying so much more interest for the money he gets; and I think, if I were to fix the rate of interest, a great portion of it would be attributable to that charge of commission, because the charge of commission would be made at so much per cent. upon the sum borrowed, not per annum; the charge of interest would be at so much per cent. per annum; and, therefore, if a man paid one per cent. commission upon the discount of a bill at two months, it would be in effect six per cent. per annum in addition to the rate of interest, whatever it might be, which the party might charge him; and I think that system of commission prevails, not merely amongst the inferior class, but to a great extent amongst persons of a higher character.

387. Can you state, taking into account the charge made for commission and the charge made for interest, what have been the rates at which money has been borrowed since the passing of the present law?

There are two classes by which money would be borrowed. If you discount with your banker, of course you pay no commission: then you pay merely the naked interest. I have no idea that any banker ever charged

more than six per cent. But if the money is raised through the medium of a bill-broker (a class of persons who have large funds to dispose of), the rate of interest will then vary. I have known a first rate bill-broker to make six or seven per cent. per annum at interest, besides the charge for commission. What that would add to the rate of interest would depend upon the period for which the loan or the discount was made. With an inferior class of persons, I have known the rate of interest to vary from *ten to twelve or fifteen per cent.*—still *besides the commission.*

388. What would be the general rate of commission in the one case and in the other?

The commission, I believe, varies from a half to one per cent. I do not think they charge more than one per cent. commission.

389. Upon bills having what time to run?

There are very few bills discounted that have more than three months to run.

390. So that, supposing the bills to have upon the average three months to run, one per cent. commission would be equivalent to four per cent. additional, and half per cent. would be equivalent to two per cent. additional, which would be to be added to the rate of interest?

Precisely.

The following are extracts from

Mr. Cook's Evidence.

543. Will you state to the Committee how you consider the change in the Usury Laws to have operated?

My own view is, that the alteration has been extremely favourable to the *capitalist*, but extremely detrimental to the borrower; and I therefore consider that it has operated very badly. I calculate that sugar amounting to thirteen millions sterling is sold upon credit; tea, six millions; coffee, two millions; tobacco, five millions; wine and spirits, seven millions; British spirits, eleven millions; cotton, ten millions; British and foreign wool, fourteen millions; flax, three millions; silk, three millions; which articles I enumerate as having come more especially under my own notice, my business being to sell the greater part of such merchandize to dealers, traders, consumers, and manufacturers. The whole of the transactions in these articles, and a few others amounting at least to one hundred millions, are represented by bills of exchange, and I reckon that the amount of the difference of interest paid by persons discounting these bills, in consequence of the change in the law, cannot be less than a million and a half, which sum has gone into the pockets of the capitalists, and for the most part has been withdrawn from the *industrious classes of the community*—for there has been no profit commensurate with the heavy charge for interest. Therefore, I believe the relaxation of the Usury Laws has acted unfavourably upon the trade of the country.

544. How do you come at the precise sum of a million and a half?

I consider that, supposing no change had

taken place, only five per cent. could have been charged; and I reckon that a difference of one and a half per cent. has been exacted in consequence of the repeal of the Usury Laws.

545. How are those bills drawn? What is the course of the transaction?

I will state the course of the transaction with regard to sugar, which branch of trade is to the extent of thirteen millions. It is in my department to sell the sugar for the consignees, particularly of the Mauritius, of which description of sugar the greatest part comes into my hands. The purchasers from me are the wholesale grocers and refiners, who again resell it extensively on credit to the dealers and consumers, and draw generally bills for the amount of their sales, and those bills have to be discounted. Tea is sold in bond to the tea-dealers, who pay the duty, and many of them resell it to the consumers, and upon whom bills are likewise drawn. It is partly the same with coffee, tobacco, wine, spirits, timber, flax, &c. The Italian silk also is sold upon bills at four months date.

546. Those are transactions in which, to a very great extent, you are yourself concerned?

Yes: I am aware in what way they are transacted.

547. At what rate were those bills formerly discounted before the laws were altered?

Certainly at one to one and a half per cent. less than they have been since discounted.

548. At what precise rate?

Five per cent., and occasionally a commission charged by the bill-broker in addition to the five per cent.

549. Was not that in violation of the law as it existed at that period?

It would have been, if the broker had made a *bond fide* transaction of it himself, that is, discounted it with his own money; but if the broker who received those bills could obtain the capital from a banker, or from any other capitalist, and charge any commission he pleased, it would not have been a breach of the Usury Laws; and I know that the trading community were occasionally subject before the repeal to commission upon bills, and had to pay in scarce times more than five per cent.

550. In those times you allude to, before the alteration of the laws, to what amount did the interest, including the commission, exceed the legal interest of five per cent?

That is rather a difficult question to answer. It would vary—depending entirely upon the state of the money market.

551. Did it ever amount to six or seven per cent?

My own impression would be that it never would have been more than five and a half or six per cent.

552. What has been the case since the alteration of the laws?

Seven, eight, and ten per cent.

553. Has ten per cent. been common?

Certainly not with mercantile people, but the trading community have been subject to that, and even a much higher rate.

554. The paper you are now speaking of

constitutes the paper used for the great commercial transactions of the country?

Yes.

555. Is not a paper of that description discounted at the Bank of England?

I should say only a small proportion of it.

556. Not sufficient to take off the large mass of what you would consider the good paper of the commerce of the country?

Referring to silk, the date of the bills would be four months; consequently, the Bank would not discount them at all, and that would be the case with the bills for timber, flax, and many other articles of merchandize.

EFFECT OF THE PUNISHMENT OF DEATH IN REPRESSING CRIMES OF VIOLENCE.

THE efforts which have been recently made in parliament to abolish the punishment of death, either totally, or in all cases except murder, induce us to direct attention to an able work, lately published by Mr. M. B. Sampson, called "Criminal Jurisprudence, considered in relation to Mental Organization."

The facts collected in reference to crimes of violence, and the arguments adduced regarding the effect of the punishment of death in repressing such crimes, will no doubt be acceptable to our readers. Indeed it is obvious that there is no class of society who can better appreciate the effect of numerous facts and circumstances than lawyers. It belongs to their vocation to do so. It is unnecessary to address to them any elaborate arguments on such a subject; they will at once perceive the conclusion to which the premises lead, and the only question will be whether the facts are clearly established.

We shall first lay before our readers a statement of all the *Homicides* committed in Great Britain during the following five years, extracted from the Annual Register. The object of Mr. Sampson is to shew that the punishment of death has no terrors for offenders of this class, who generally contemplate suicide.

"1831. 10th March.—*M. Sundry*, tried at Lincoln for murder of *T. Seward*."

"11th March.—*Charles Giles*, aged twenty-two, tried at Salisbury, for poisoning his own child.

"11th March.—*Moses Ferneley*, tried at Lancaster, for murder of his step-son, five years old. He was committed on slight evidence; but from the testimony of a man who was confined in the same gaol, it appeared that, upon his coming in, he carelessly detailed the principal circumstances of the murder. There

were several persons present, all of whom heard the conversation.

"12th March.—*A. and W. Worrall*, found guilty at Lancaster for murder of *Sarah M'Chrenin*.

"23d July.—*Wm. Offord* was tried at Bury St. Edmund's for shooting *Thomas Chisnall*. He afterwards attempted to destroy himself by cutting his own throat.

"29th July.—*John A. Bell*, aged fourteen, tried at Maidstone for murder of *Richard Taylor*, aged thirteen. The prisoner made a confession previously to the trial. On entering the gaol, he said he need not be ironed; he knew he should be hanged, and would not attempt to escape. He was found guilty; but the jury recommended him to mercy, on account of his youth, and the profligate and unnatural manner in which it appeared that he had been brought up. This recommendation was not attended to, and the sentence was carried into execution.

"14th December.—*John William Holloway*, tried for murder of *Celia Holloway*, his wife, at Brighton. He was found guilty, on his own confession.

"1st Dec.—*Bishop, Williams, and May*, tried for murder of a boy for purpose of selling him for dissection. *Bishop* and *Williams* were executed, and *May* was respited. The two former made confessions subsequently to their trial.

"1832. 6th January.—*Eliza Cook*, found guilty of murder of *Caroline Walsh*.

"9th March.—*William Heaton*, convicted of murder of *John Ratcliffe*, made subsequent confession.

"10th March.—*John Thomas*, convicted of murder of *Ellen Bancroft*.

"23d March.—*Sarah Smith*, indicted for poisoning *Elizabeth Wood*.

"1st August.—*William Jobblin* convicted of murder of *N. Failes*.

"5th August.—*Thomas Songe*, of Stockport, murdered his wife, and then destroyed himself. One of his children, a girl eleven years old, was present at the time, but was compelled to be silent, in consequence of a threat that *Songe* held out to her, that, if she spoke a word, he would murder her also.

"8th August.—A man, named *Cook*, tried at Leicester for the murder of *Mr. Paas*. The prisoner was traced to Liverpool, and arrested as he was making off in a boat. He leaped overboard, and attempted to drown himself. Failing in this, he took out a bottle and tried to swallow something from it; but it was knocked out of his hand. The prisoner confessed the murder; and said, that, 'afterwards he did not care whether he was apprehended or not.' It is stated that 'he died the death of infamy, as cool and unappalled as if he had been a martyr sacrificing himself for his country or the human race.'

"1833. 4th January.—*Wm. Johnson* found guilty of the murder of *B. C. Danby*. Subsequently to his conviction, the prisoner made a confession and said, 'I can only say I had no hand in robbing him (*Danby*) either directly or indirectly; and what possessed me to par-

icipate in killing him, I know not; but after the deed was done, I was ready to kill myself. I now say I ought to die for committing such an act.'

"14th January.—Inquest at Leeds upon *Wm. Cryer*, an infant who had been murdered by his mother; who immediately afterwards cut her own throat. Upon an alarm being given, people entered the house; when the unhappy woman asked 'What was the matter?' A surgeon deposed that she was labouring under milk-fever; and that he had known cases where the fever had led to the temporary loss of reason. A verdict of 'Wilful Murder' was returned: but further proceedings were stayed by the death of the woman, which happened a few hours after.

"20th March.—*Wm. Clayton*, tried at Nottingham for murder of *Samuel Clay*. The prisoner had been bred a butcher; and 'occasionally assisted in the slaughtering of cattle;' he was found guilty, and subsequently made a confession of which no detailed account is given.

"25th March.—*Samuel Chadwick*, tried at Derby for murder of *Susanna Sellers*. Labouring under an impression that a surgeon in the neighbourhood had given him a slow poison, he assaulted the surgeon with a hammer; for which he was taken to gaol, and on his way he made an attempt to destroy himself by jumping into a river: subsequently he attempted to do so with a razor: both these attempts having been frustrated, he promised to behave well in future, and was SET AT LIBERTY! He afterwards called at the house of the deceased, and asked her for a cup of water, which she rose to give him, when he seized an axe, and killed her. A surgeon gave an opinion that he was of unsound mind; and he was acquitted on the ground of insanity, and ordered into confinement.

"24th July.—*T. Crawley*, tried at Bedford for murder of *J. Adams*.

"2d August.—*Geo. Hayward*, found guilty, at Shrewsbury, of the murder of *John Corser*. The prisoner paid addresses to the sister of the deceased, to which her family objected. On the night of the murder, the deceased turned the prisoner out of the house, and kicked him. Some further altercation ensued, when the prisoner stabbed the deceased. He lived close by, and he then went home to bed. He got up the next morning and went to an attorney, who returned with him; and he was then apprehended. He was sentenced to death.

"16th Aug.—*John Roach*, private, Eighty-fifth regiment, found guilty, at Lancaster, of the murder of Corporal *Daniel Maggs*. On the night previous to the murder, the prisoner had been confined in the guard-house by order of the deceased, for insubordination. On the following morning, he entered the barrack-room with his musket in his hand, and said, "Corporal Maggs, I thank you for what you have done for me." Maggs replied, 'John, it was your own fault.' Roach then levelled his musket, and shot the Corporal. He made no attempt at escape, and never denied the act.

"16th Dec.—*Mary Evans*, aged twenty, was murdered by *Richard Tomlinson*, at Ranton, Staffordshire. The prisoner had kept company with deceased for some time; walking together on the day of the murder, a quarrel took place between them; and upon her repeatedly reminding him that 'his father was poisoned, and that his mother died in gaol,' he knocked her into a ditch and killed her. He then went to a farmer in the neighbourhood, and confessed his crime. Upon being apprehended, he said—'I did it; I am ready to die for it. I only wish to be laid by her side.'

"1834. 25th July.—*Benj. Gardiner*, aged twenty-nine, private grenadier, Fiftieth regiment of foot, tried for murder of *Patrick Feeney*, serjeant of the regiment. The prisoner deliberately shot the deceased during parade, in the barrack-yard at Chatham. Immediately afterwards he said, 'I have rid the world of a tyrant and a rascal, and I am ready to die for it.' He then turned to another Serjeant, named *Hewer*, and said—'Serjeant Hewer, you are safe that you are living, for that piece was loaded for you before;' and on hearing that the Serjeant who was shot was not dead, he said, 'I hope he will soon die, for I am not afraid of the rope.'

"1835. 13th March.—*J. Greenwell*, tried at Appleby for murder of *Thomas Gristdale*. After fighting with a man, named *Rothry*, in a public house, *Greenwell* and another challenged the deceased; who said, good-naturelly, that if it was daylight he would take both of them. *Greenwell* afterwards falling in with deceased on his road home, ran at him, and stabbed him with a knife in several places. The prisoner ran away at the time, but remained in the neighbourhood, and, when found, made no attempt to escape.

"20th March.—*Norman Welch* was tried for the murder of *William Southgate*, at Liverpool. Deceased was a surveyor of warehouses; prisoner had been a locker, but had been reduced to the inferior station of weigher, in consequence of a representation from deceased that a robbery had taken place in one of the warehouses. The day before the murder, he had said—'Mr. Southgate and I have been too long in the world together; we shall both resign. I hope we shall both go to Heaven together.' The prisoner shot the deceased while he was in conversation with another officer of the customhouse: he then threw down the pistol, and said, 'There!' A Customhouse weigher instantly seized him; when he said, 'It is I who have done it: I am a robbed man.' When asked if he was aware what he had been doing, he replied 'Yes,' that he had shot a d—d rogue, who had robbed him.' During his confinement, he said he had drunk spirits very hard of late, which had kept up a constant excitement in his mind; he had taken leave of his family on the morning of the murder, as he did not expect to return to them. For the defence, Dr. Norris, an army-surgeon, proved that the prisoner had formerly received an injury of the head which might affect his mind, and the more readily when he had taken liquor.

Several witnesses proved the propensity of the prisoner to acts of violence and outrageous passion, frequently excited and inflamed by drinking. He was, however, found guilty, and sentenced to death.

"24th March.—*John Orwell* was tried for poisoning his daughter *Elizabeth*, a child six years of age. He was suspected of having also murdered his wife and son, who had died a few days previously. It was proved that, some time before the murder, the prisoner had been in Lancaster Castle for debt; he often sent to his wife and friends for money; when he did not speedily receive a reply, he talked most violently against them; and repeatedly swore that, if ever he got out of gaol, he would be the death of his wife and child, and of his wife's brother. 'He said this more than twenty times, probably fifty.'

"28th March.—*John Henwood*, tried for murder of his father, *John Henwood*, senior. He shot his father in a lane. Some words had passed in the morning. He did not return home that day, but was met in a field near the spot next morning. He waited till the parties came up to him. When they took him into custody, one person said to him, alluding to the deed which he had committed, 'I should have thought your heart would have failed you.' The prisoner replied, 'Yes, it did at first. I put the gun to my shoulder, and took it down again; but something struck me I must do it. I put my gun to my shoulder again, and it was off in a moment.'

"3d April.—*William Howe*, aged nineteen, and *John Howe*, aged nineteen, tried at Taunton for murder of their employer, *John Harvey*. Both parties confessed previously to the trial.

"15th May.—*Patrick Carroll*, aged thirty-two, Corporal of Marines, tried for the murder of *Elizabeth Browning*, at Woolwich. The deceased was landlady of a public-house. The prisoner stabbed her to death with his bayonet. He had drunk nothing in the house after eleven o'clock the preceding night; when he seemed wild and frantic. Prisoner and deceased quarrelled a great deal on that evening, when he said he would do for her. The policeman, who took the prisoner into custody, stated, that the latter said instantly, 'I am the man who stabbed Mrs. Browning.' He afterwards added, 'It is a bad job; I know my doom.'

"7th Sept.—An inquest was held on the body of *Henry Stanynought*, junior, who had been killed by his father. A surgeon, who had been sent for, found *Mr. Stanynought* in bed, and the dead body of his child lying by his side. He had also wounded himself; and said, in a perfectly quiet manner, that he did it with his own hands; that he had meditated destruction to himself and child some length of time; that he had burnt charcoal in his room for two nights with that object; he had also taken laudanum. Subsequently he said, 'How could I do it? It would be a mercy for any one to destroy me.' The jury pronounced a verdict of 'Wilful Murder;' but added, that they entertained a strong suspicion that *Mr.*

Stanynought was labouring at the time under mental delusion."

Mr. Sampson observes, that in a large majority of these cases the punishment of death was contemplated previously to the commission of the act, and that the subsequent confession, and voluntary surrender of the guilty party, was a sort of indirect suicide, added to the first offence.

"In some cases, (he says) it seems, as if the murderer considered that, in surrendering himself to death, and gratifying the suicidal propensity, he achieved a kind of moral expiation of his crime; and that it was by contemplating this course that he reconciled it to his views of equity.

"In a great proportion of the remaining cases which I have quoted, the homicide was followed by the direct suicide of the culprit; the strong tendency to self destruction, which is almost invariably manifested by murderers, forming an apt illustration of the effect of that law which holds out self destruction as a consequence of the offence.

"It is proper to remark, that the records from which I have collected the above details, are for the most part extremely limited. I consider, therefore, that it is very probable that if I were in possession of full particulars relating to each case, including some account of the previous lives of the culprits, I should be able to show that, even in the few cases in which I have not been able to collect facts illustrative of my present view, the union of the suicidal with the homicidal tendency had been no less strongly manifested.

"The experience of the years subsequent to the above date would show a similar result even in a more striking point of view; particularly in the cases of homicide which have occurred during the past year. I may allude to the case of *Marchant*, who surrendered himself for the murder of his fellow-servant; and also to that of *William Lees*, who was executed for the murder of his wife. In the latter case, it was satisfactorily proved that the prisoner had at different times received severe wounds on the head, the scars of which remained, and were of a permanent nature. Those about him had often found it needful to remove dangerous instruments from his reach; and on different occasions he did violence to himself. When brought up for examination, he had an absolute fit, which deprived him of consciousness, and required the abstraction of one or two pints of blood for his recovery. This man, after having murdered his wife, prepared a rope for the purpose of hanging himself; but he deferred his purpose, and went first to acquaint his friends with the crime he had committed. After this, he was taken into custody; and it appearing upon his trial that he had committed one crime, viz. the murder of his wife, and that he had intended to commit another of equal magnitude, viz. the murder of himself, the law awarded

that, as a punishment for the first, his desire for the second should be gratified; and he was accordingly executed in the very mode which he had previously contemplated.

"In the early part of last year, an inquest was held in one of the northern counties on the body of a shoemaker named Silcox, who, calling upon a man and his wife with whom he was acquainted, rose up, after partaking of some elder wine, and stabbed and beat them to death. He then pursued a boy with the same intent, but not succeeding, retreated from the house, and, after mutilating himself, threw himself into a stream, where he was drowned.

"The newspapers of the 22d February last, had the following paragraph: an occurrence of a tragical character has taken place within the last few days, at Mitcham. A young man named *Thomas Potts*, conceived, from some domestic disagreement, the horrible project of destroying his wife, and afterwards committing suicide. He had been observed to be low spirited and melancholy. On Tuesday, he left home and did not return until 9 o'clock at night. He immediately went into the room where his wife was sitting with her mother, and, without saying a word, pulled a pistol from his pocket, presented it at his wife, and fired it off. The greater portion of its contents passed through her cheek. The shrieks of the women fortunately attracted attention, and a labouring man, who was passing, came into the house, and seized hold of Potts, and, after a struggle, forced him into a chair, and held him there until West, the headle of Mitcham, arrived and secured him. The prisoner then said, "I have done it, I have done it; I have murdered my wife, and I hope I shall be hung." West searched him, and in one of his pockets found a second pistol loaded to the muzzle, and in his coat pocket a razor. He asked Potts what he was going to do with the razor, and he replied that he intended to destroy himself with it, after he had killed his wife.

The recent case of *Cournoisier* presents little that can be brought forward in illustration of my present view. It is true that he confessed previously to the termination of his trial, and that he attempted suicide after his conviction; but this, it may be said, he might naturally prefer to the horrors of a public execution. The expression, however, of the poor wretch a few moments before his death, gave utterance to a terrible truth, which, unfortunately, those who heard it could but little understand—"How could I do it? it was madness!" It is worthy of remark, that the public death of this criminal was, as usual in such cases, followed by a series of maniacal crimes of more than ordinary atrocity.

"In almost all the cases of homicide which I have quoted, it will be apparent to those who consider the circumstances under which they were committed, that the attempts at suicide by which they were followed, did not arise from any subsequent impression that suicide had become necessary in order to escape from the more fearful alternative of a public execu-

tion. In many of the instances, attempts at suicide had proceeded the murder; and in others the conduct of the culprit gave clear indications that he had previously prepared himself, and indeed entertained a desire for his own death."

Mr. Sampson next proceeds to state various circumstances in favor of the total abolition of the punishment of death, and particularly in regard to the effect of public executions on the minds of the spectators. He says—

"It is a well-known fact, that the class of persons by whom executions are attended, or by whom accounts of them are most eagerly read, are those who feel a peculiar kind of fascination in witnessing the infliction of pain; and this class is more than any other predisposed to homicidal mania. It has been stated by Mr. Ewart in the House of Commons, upon the most unquestionable testimony, that out of 167 persons who had been executed, during a certain period, 164 had been present at executions. The Ordinaries of Newgate affirm, that it is very rarely that any one suffers at the Old Bailey who has not previously been a witness at a similar scene. These facts are universally admitted and deplored: and yet capital punishments are supported by those who, at the same time, confess that the infliction of death in a secret manner presents, if possible, still more objectionable points.

"The following is stated to have been the scene at the execution of the two men named *Bishop* and *Williams*, on the 5th December, 1831. By daybreak it was estimated that not fewer than 30,000 persons were assembled. Before proceeding to the scaffold, both prisoners confirmed their confessions. *Bishop* mounted first. The moment he made his appearance, the most dreadful yells and hootings were heard amongst the crowd. *Williams* was then taken out, and the groans and hisses were renewed. The moment the drop fell, the mob, who had continued yelling and shouting, gave several tremendous cheers!

"I presume that those who contend for the advantages of public executions, do so on account of the moral feelings which they believe such exhibitions are likely to excite in the minds of the spectators, coupled with the salutary dread which they are calculated to inspire, thereby deterring others from pursuing a similar course. Upon the degree of moral feeling excited by such occasions, the fact that in the above instance, the mob, consisting of 30,000 persons, gave 'several tremendous cheers' at the moment when the two unfortunate beings of a race where all are sinful, were launched into the presence of an eternal God, is a fearful commentary. And regarding the 'salutary dread' to be inspired in the way of example, it will be sufficient to notice the fact, that, for many subsequent months, the newspapers teemed with accounts of murders of a similar character to those for which these criminals suffered.

"Those who have rightly studied the facts which everywhere abound relating to the exciting causes of the various emotions of the human mind, know that those who attend executions from choice, do so with the view of gratifying the very propensities, the activity of which it is ostensibly intended to suppress. The benevolent and religious are shocked at the infliction, and abstain from witnessing it.

"The *Metropolitan Magazine* for Mar. 1840, contained a curious account of one of the natural results which arises from these exhibitions.—We knew a healthy, robust, independent gentleman, who went some years since with the Sheriff into the interior of Newgate to visit a malefactor who was to be executed the same day. After the drop had fallen, he went with others to the breakfast table, where he could think of nothing but the execution he had witnessed; and before he left, he requested the sheriff to procure the rope with which the man had been suspended. It may be mentioned, that it was not an execution of common occurrence. Possessing one rope, it subsequently occurred to him, as the next much-talked of execution was to take place, that he would also have the rope used on that occasion. In the course of a short time, he had a collection of ropes, labelled and deposited carefully in a drawer. About two years after the *penchant* for collecting ropes used at executions had manifested itself, it was observed by his friends that his conversation most frequently turned on the subject of the executions he had witnessed, and the success he had met with in procuring such a number of ropes; which he usually brought out to exhibit to his friends, expatiating on the comparative merits or demerits of the sufferers, until at length his society became unbearable, and he received the *sobriquet* of the man with the pensile idea. He lived about fourteen years after witnessing the first execution; at last *putting an end to his own life*, by suspending his body with one of the ropes he had collected from the common hangman."

The following further objections are then urged against the infliction of the punishment of death.

"1. A strong point of objection is found to exist in the natural and intuitive disinclination of benevolent men to become the means of putting a fellow creature to death, and the consequent falsification of their duties as jurors; by which means a culprit of the most dangerous kind is sometimes permitted to escape. This was well instanced in the recent case of *Gould*. Had the contingent punishment been any thing short of death, it is most probable that he would never have received an acquittal.

"2. Another evil of this punishment is presented in the occasional instances which occur of parties suffering for crimes of which they were innocent, society being thus disabled from offering reparation for injuries which they have themselves committed. It must also

be remembered, that the more heinous the crime laid to the charge of the accused, the greater is the probability of an erroneous conviction, on account of the excited feelings of his accusers.

"3. The employment of death-punishment destroys one source of testimonial proof. The death of one criminal is in a great measure an act of amnesty in favour of all his accomplices. The 'honour among thieves' feeling can nerve a man to die like a wolf, in silence. But amid the tedium of confinement, haunted by fancy's pictures of the liberty his equally culpable colleagues are enjoying, his determination may relax, and information calculated to promote the ends of justice be obtained from him."

On the argument against the abolition of capital punishment for murder "that in cases of highway robbery, burglary, &c., if the robber knew that the punishment would be the same, whether he murdered his victim or not, he would invariably do so in order to remove the danger of his evidence," Mr. Sampson contends as follows:

"The treatment for any crime below that of murder should not, even if death punishment were abolished, be so severe as for murder itself. In lesser crimes the same necessity for *perpetual* restraint does not exist; and therefore the period of the incarceration of the criminal should be contingent entirely upon his own improvement, and certainly need rarely be so prolonged as to terminate only with his life. In these cases, hope at all events need never be abandoned, but the crime of murder should involve as its penalty the doom of perpetual imprisonment; since, although a person by whom it has once been committed may be apparently cured of the tendency, it can never be safely predicated that the impulse may not again arise under the sudden influence of external excitement. He must be kept from temptation, because the maniacal tendency may always be presumed to lurk in the system; and even if the patient were to be so far brought back to habits of self-control as to be no longer dangerous, the possibility of his transmitting the fatal tendency to another generation should never be permitted. Although, therefore in cases of murder, the confinement of the patient should be effected with as much humanity as possible, it should never, *on any pretence*, be remitted. Every effort should be made to bring his mind to that state which should induce him to acknowledge the justness of his fate, and to be sensible that it is inflicted out of regard both for the welfare of himself and of society, and that revenge had no voice in the administration of his doom. That this course would operate powerfully in deterring others from the commission of the crime by which it became necessary, is well instanced in the suppression of the *rigicidal mania* which existed in France during so many years of the reign of the pre-

sent king. In the early instances, the usual impolitic course of a revengeful trial and a sanguinary death, was resorted to by the authorities: it was not until that course was abandoned, and one of the offenders was consigned to the *obscurity of a private madhouse*, that the rigid epidemic appears to have been in any degree stayed.

"I may here remark upon the well-known fact, that the chance of being considered to be insane is always looked upon with horror by every mind. If it were once clearly understood, that obedience to the laws is the real test of social sanity, we should at once take away all the temptations to crime which operate upon that large class who commit it for the sole purpose of acquiring notoriety. Criminals of the Corsair, Eugene Aram, and Jack Sheppard school, would soon become obsolete, if the only prospect which awaited their career was that of being transferred to an hospital for the cure of mental disorders, instead of being enshrined in the pages of a romance, as interesting men possessed of dark yet mighty minds, far beyond the ordinary level or comprehension of their race. The stimulus which the vague admiration of the public affords at present to this class of criminals, exciting, as it does, their unduly developed faculties of love of distinction and self-esteem, to act in unison with their preponderating animal propensities, would then be withdrawn, and these very faculties would then furnish powerful motives to deter their possessor from running the risk of subjecting himself to a fate so low as that which would distinctly mark the condition of his brain as being below, instead of above, the ordinary level of the brains of his fellow men. If all crime were acknowledged to result from mental disorder, we should not hear so frequently of those who are anxious to blazon and boast of their misdeeds, any more than we now hear of persons who are desirous of challenging public attention to any other physical infirmity.

"Another advantage which would attend the recognition of the fact that criminal acts result only from an ill-conditioned brain, would be found in the ready aid which the relatives and best friends of the criminal would offer to the operation of the law. Under the present system, there are few persons who, in the case of crime committed by a husband or wife—a father or brother,—would not attempt to stand between the culprit and the vengeance which awaited him in the shape of capital punishment; while, if his crime were recognised to arise from a disorder, which, unless it should be speedily mitigated, must lead to more fearful results, they would at once use all their efforts to place the unhappy subject of their care in a position where alone this object could be effected."

We cannot close these extracts without expressing our respect for the great benevolence, zeal, and ability of Mr. Sampson, and we heartily recommend his work to public attention.

PRIVATE ACTS,

PRINTED BY THE QUEEN'S PRINTER,
AND WHEREOF THE PRINTED COPIES MAY BE
GIVEN IN EVIDENCE.

[Concluded from p. 315, ante.]

31. An act to authorize the granting of leases and conveyances for mining purposes of estates at Northwingfield in the county of Derby, the property of Frederick Lord Clay and his infant son Richard Clay.

32. An act for vesting certain estates situate in the county of Leicester, devised by the will of Catherine Moyer spinster, in trustees, upon trust to convey the same in exchange for certain other estates situate in the same county.

33. An act for selling a part of the entailed estate of Newton in the county of Haddington, and applying the price towards discharging part of the debts incurred in improving the said entailed estate; and also for exchanging certain parts of the entailed estate for lands held in fee simple.

34. An act to amend "An act for vesting estates of which Gifford Warriner, Esquire, a lunatic, is tenant in tail, in trustees for sale, and also for effecting a partition of certain parts thereof, and for granting leases;" and to enable the said trustees to make conveyances in fee, subject to rent-charges, and leases for long terms of years, at reserved rents, of the unsold portions of the said estates, and to make sale of the rent-charges and of the reversions in fee expectant on the leases.

35. An act for carrying into effect a contract between Edward Greasley Stone and John Attwood, Esquires, for the sale of the Coptfold Hall estate, in the county of Essex, to the said John Attwood, and for investing the purchase money in other estates, to be settled to the same uses; and also for authorizing the exchange of certain lands and hereditaments in the counties of Worcester and Gloucester, devised by the will of John Stone, Esquire, deceased.

36. An act for authorizing leases to be granted of the Burros estate in the parish of Kingswinford, in the county of Stafford, devised by the will of Thomas Westwood, deceased, to Thomas Westwood during his life, and after his decease upon the trusts of such will.

37. An act to enable the trustees of the trust estates in Scotland of John Bowes Lyon, late Earl of Strathmore and Kinghorn, deceased, to advance and pay certain yearly sums on behalf of Thomas George Lyon Bowes, commonly called Lord Glamis, his grand-nephew, who in certain events will become entitled to the trust estates in question.

38. An act to enable the trustees of the hospital of Saint John the Baptist in the city of Winchester to effect an exchange with Sir Edmund Antrobus, Baronet, under the authority of the Court of Chancery.

39. An act to enable the trustees of the will of the late Peter Dutton, Esquire, to make sale of part of the estates devised by the same will, and to pay out the money arising from any such sale in the purchase of other estates, to be

settled to the subsisting uses of the said will, and to make conveyances in fee, or demises for long terms of years, of other part of the said estates, for the purpose of building on and otherwise improving the same, and also to apply a sum of money arising from the sale of part of the estates devised by the said will in carrying the aforesaid objects and purposes into execution.

40. An act for ascertaining and defining the glebe land of the rector of Abington, alias Abingdon, in the county of Northampton, and for building a parsonage house for such rector.

41. An act for effecting a sale and conveyance from the feepees or trustees of the parish of Saint Mildred, Bread Street in the city of London, to the Fishmonger's Company, and for investing the purchase money in other estates, to be settled to the same uses.

42. An act to amend an act passed in the second and third years of the reign of her present Majesty, intituled an act to authorize the sale of certain lands, tenements, and hereditaments in the counties of Kent and Northampton, formerly belonging to William Marshall, of Clifford's Inn in the city of London, gentleman, deceased, and for other purposes incidental thereto.

43. An act for effecting an exchange between the mayor, aldermen, and burgesses of the borough of Great Yarmouth in the county of Norfolk and the trustees of a charity in the said borough called "the Children's Hospital."

44. An act for enlarging the power to grant leases contained in the will of Alexander Lyon Emerson, Doctor of Medicine, deceased; and for other purposes.

45. An act to enable the trustees of the Old-bury Charity to grant building leases.

46. An act for vesting in the overseers of the poor of the township of Blackburn, in the county palatine of Lancaster, parts of the Town's Moor, for sale or other disposal thereof.

47. An act to enable the trustees of the chapelry of Smethwick, in the county of Stafford, to demise coal and other mines, and to grant building leases.

PRIVATE ACTS.

NOT PRINTED.

48. An act for naturalizing Henry William Ferdinand Bolckow.

49. An act for naturalizing Gustavus Heyn.

50. An act for naturalizing Frederick Salomo Bogdan.

51. An act for inclosing lands in the townships or divisions of Dovenby and Papcastle in the parish of Bridekirk in the county of Cumberland.

52. An act for naturalizing Charles Christopher Burghett.

53. An act to dissolve the marriage of Nathaniel Bogle French Shawe, Esquire, with Charlotte Shawe, his now wife, and to enable him to marry again; and for other purposes therein mentioned.

54. An act to dissolve the marriage of John Pascal Larkins, attorney at law, with Eliza

Bird, his now wife, and to enable him to marry again; and for other purposes therein mentioned.

55. An act to dissolve the marriage of Harry Dent Goring, Esquire, with Augusta his now wife, and to enable him to marry again; and for other purposes therein mentioned.

56. An act to dissolve the marriage of Thomas Wyatt, Esquire, with Elizabeth Grey, his now wife, and to enable him to marry again; and for other purposes therein mentioned.

57. An act to dissolve the marriage of John Hall, Esquire, with Jemima Caroline, his now wife, and to enable him to marry again; and for other purposes.

58. An act for naturalizing Marzio François Giordano.

59. An act for naturalizing Philipp Jacob Passavant, and Philipp Johann Passavant, Theodor Passavant, Mary Magdalen Johanna Passavant, Jacob Rudolph Passavant, and Henrietta Mariane Laura Louisa Augusta Passavant, his children.

LAW LIFE ASSURANCE SOCIETY.

Rejoicing always in the success of the profession "by which we have our being," we willingly find room for the following report made by the directors to the proprietors and the assured, at a meeting held on the 5th June last.

"The proprietors and the assured are aware that by the provisions of the deed of settlement, the 31st of December last past was the day on which, for the *second* time, the assets and liabilities of the society were to be ascertained, and the surplus, (being the profit made after providing for the liabilities,) divided in the proportions of one-fifth to the proprietors and four-fifths to the assured. It will be remembered that the first period of division was at the termination of *ten* years from the establishment of the Society, but that the present division embraces a period of only *seven* years.

"The first step taken by the directors, was to compare the amount of premiums received during the former period of ten years, with those received during the last seven years; and the comparison has afforded them great gratification, in which they doubt not the assured and the proprietors will participate, when informed, that from the Society's commencement in 1823, to the close of the year 1833, the premiums received amounted only to 880,295*l.*, averaging 88,029*l.* per annum, whereas those received during the last seven years, to the close of the year 1840, have amounted to 1,399,066*l.*, being a receipt of premiums during that period very nearly averaging 200,000*l.* per annum, or more than double the annual average receipt during the former period.

"The amount of premiums actually received during the last year was 241,875*l.*

"The number of policies issued, during the first ten years, was 4735, averaging yearly

473 policies. The number issued during the last seven years was 4185, shewing an annual average of 598 policies. The number actually issued during the last year was 609.^a

"The directors next proceeded to determine the amount of the assets of the assurance

fund of the society, as well as the amount of its liabilities, at the close of the year 1840, in order to arrive at the amount of the surplus which is now to be divided.

"The result of this branch of the investigation is as follows:

Assurance Fund.

	£	s.	d.	£	s.	d.
Total assets up to and on the 31st December, 1840	1,658,796	2	5			
Total estimated liabilities up to and on the 31st Dec. 1840	1,111,159	17	1			
Leaving a surplus profit of				547,636	5	4
Which surplus being divided according to the provisions of the deed of settlement, will give to the proprietors				109,527	5	1
And to the assured				£438,109	0	3

Guarantee Fund.

On the 31st December, 1833, was	202,045	8	6			
Add the one-fifth of the present surplus	109,527	5	1			
Making the total amount of the guarantee fund, up to the 31st December, 1840				311,572	13	7

"It may be satisfactory to place before the meeting, in another point of view, the comparison of the progress of the establishment during the first ten years, and the last seven years. At the expiration of the ten years, the sum of 224,134*l.* was appropriated to the assured. For the last seven years, the sum of 438,109*l.*, being nearly double of the former amount, has been so appropriated. During the first period of ten years, the sum of 56,033*l.* was transferred to the guarantee fund, and for the last seven years the sum so transferred is 109,527*l.*, also being nearly double of the former amount.

"The whole of the funds of the society are invested, either on real or in government securities. The real securities being unexceptionable mortgages, and the government securities being either perpetual annuities, annuities for terms of years, or Exchequer bills.

"In ascertaining the assets of the society, the value of the perpetual annuities has been taken at their cost price, and not at the market price of the day of valuation, for the reason given in the report made by the directors to the assured and proprietors on the last division of surplus; viz.—that, from the investments taking place at nearly equally distant periods, and in sums not suddenly or greatly differing from each other, and in like manner, the sales being somewhat on the same gradual scale, a fairer and more constant average valuation of stock is thus derived from the Society's own experience, in its purchases and sales.

"When, in the opinion of the directors, the market price of the perpetual annuities has exceeded their probable future average price, part of these annuities has been converted into annuities for terms of years; and in order that income might not be mistaken for capital,

^a The total number of policies which remained in force at the close of the year 1840, was 5820.

these annuities have undergone, at the end of each year, a valuation at the rates of interest at which they were purchased, and the annual deterioration in value, from lapse of time, has been regularly written off; so that, at the end of the period during which these temporary annuities are to be received, the cash column value opposite to their entry will entirely vanish, but will re-appear in those securities in which the annually redeeming part of these annuities shall have been re-invested; and inasmuch as the re-investments have hitherto been made at an average price, much lower than the price at which the conversions took place, the directors have made a profit for the society by these transactions.

"In ascertaining the liabilities of the society at the close of the year 1840, all the computations have been made, as before, upon precisely the same elements of calculation, as those adopted in the construction of the tables of the society's premiums: viz. the Northampton table of mortality, at an interest of 3*l.* per cent.

"The Directors held out to the society, in their report of 1834, the prospect that this principle of calculation would, at the future periods of divisions, secure progressive and satisfactory increments of divisible profits, and they are happy to say, that experience has fully realized, on the present occasion, those expectations.

"The sum of 438,109*l.*, being the amount in present money to which the assured are on this second division entitled, has been converted into the equivalent reversionary sum of 704,781*l.*, by reason of its being only payable at the death of the parties; and this latter increased sum has been apportioned amongst the assured, by being added to their policies in precisely the same manner as on the former division, due regard being had to the date of those policies. Those who have partaken in the former division are now ranked as of seven

years' standing, but with the advantage of their increased age at the commencement of the last period of seven years, and with the profit on the bonus that was then apportioned to them; while those who were assured prior to the last division, but who did not *then* participate, now rank as of eight, nine, or ten years' standing, according to the dates of their policies; and those who have been assured subsequently to the year 1833, and prior to the year 1838, will participate in the present division according to the dates of their respective policies.

"The amount of the reversionary sum or bonus now added to each policy will be communicated to the assured individually with as little delay as possible.

"In the mean time, however, it may be satisfactory to the meeting, to have submitted to them the following scale of bonuses; from which some notion may be formed as to the amount to be expected by any individual with reference to his own particular case.

"*Specimen Table of the Bonuses*, in even pounds, added to policies of 1000*l.* each, which have been in force seventeen years, ending 31st December, 1840, including the bonuses added on the former division.

Age at Commencement.	Bonus.
	£
20	316
25	325
30	338
35	359
40	391
45	431
50	483
55	533
60	681
65	885

"It may be proper to add, that the non-participants on the present occasion will, on the next division, be ranked as of eight, nine, or ten years' standing, according to the dates of their policies.

"The proprietors have been informed, that by the addition now made to the guarantee fund of the one-fifth of the present division, that fund now amounts to 311,572*l.*; the directors therefore are enabled and intend to increase the annual dividend upon their shares to 25*s.* per share (being after the rate of 12½ per cent. upon the sum originally paid) payable on the 5th April, 1842, and on every subsequent 5th day of April, until the next division of surplus.

"In conclusion, the directors have only to express their hope, that the present report may be as satisfactory to the assured and to the proprietors as it is to them: and, that the past success will have the effect of stimulating the zeal of every proprietor, and of every party assured, to a continuance of those exertions, which have led to the signal prosperity which the Society has already attained."

UNITED LAW CLERKS' SOCIETY.

We have deferred noticing the Annual Meeting of the United Law Clerks' Society, which was held on the 18th May, in expectation of being able to collect a full report of the proceedings of the day, and particularly of the speech of Sir Frederick Pollock, who kindly presided on the occasion. We regret to find that only a short and imperfect report of his address has been preserved. The cordial and eloquent manner in which Sir Frederick discharged the duties of the chair afforded much gratification to the assembly.

Our readers are aware that the society has been established for the mutual benefit of law clerks generally, and that its benevolence is not limited to any particular class of clerks, but extends not only to the clerks of attorneys, but the clerks of barristers, special pleaders, proctors, conveyancers, and clerks in the public law offices. It is supported by monthly subscriptions of the members, and by voluntary donations from the bench, the bar, the solicitors, and indeed of all members of the legal profession and other benevolent persons, who are entitled to recommend cases of distress on becoming donors. The primary objects in view, are to create a fund for the maintenance and support of members or their wives, during sickness, superannuation, or for the support of the surviving family, should death deprive them of their parents. It is, moreover, intended to obtain situations for members, and to afford relief to distressed law clerks who are not members of the society.

After the usual toasts, the Secretary read the Report, announcing that the society had a sum amounting to 3537*l.* now in the funds; that the receipts of the year ending April 1841 amounted to 954*l.*, and the expenses to 496*l.*, and that the funds of the society were in a promising condition.

Sir Frederick Pollock then rose to propose the toast of the evening—"Prosperity to the United Law Clerks' Society." In reminding the members of the legal profession of the high character which they had obtained for integrity and disinterestedness, he said that one of Britain's proudest boasts was the impartial manner in which the administration of justice was carried on in this country. He adverted to the erroneous, but prevalent impression, that the law was a quarrelsome profession," but, said he, if we quarrel it is only amongst ourselves. We settle all our disputes *inter nos*, and in proof of our being a united and peaceful profession, I have only to look before me, when I see nearly four hundred of my brethren assembled to stretch forth the hand of charity to sick, distressed, and helpless colleagues. I find that I have forgotten to give the usual toast of "the Army and Navy;" and a wag on my left says he supposes the reason of this is, that we wish to keep all the fighting to ourselves. Let us do our best, gentlemen, to dispel this illusion, and shew the world that our profession will

yield to no other in love of peace, kindness and benevolence—let us show by our numbers and by the magnitude of our subscriptions to the funds of this society, that we but little deserve the stigma which has been cast upon us by satirical dramatists and others, who look upon the law as a means of stirring up instead of quelling personal animosities.”

He dwelt upon the fidelity, zeal and intelligence by which the clerks of the profession were distinguished, and enlarged on the influence which the society would have in raising the character of that numerous and essential class to which the members of the society belonged.

With much earnestness he urged the strong claims which the society had upon all branches of the profession; and in reference to a remark which had been made of his being the first member of the bar who had taken the chair at these annual meetings, he said that he had responded to the call so soon as it was made, and he had no doubt that other members of the bar would take their turn with the solicitors in presiding on future occasions.

The meeting was also addressed by Mr. Foss and Mr. Bigg, the trustees of the funds of the society, and by Mr. Scudding, and other donors.

MISCELLANEA.

ANCIENT DEEDS.

About 1380, the transfer of slaves in this country was effected in the subjoined laconic form. “Know all men, that I have sold — and all his offspring born, or to be born.” *Natum meum cum totâ sequela sua procreata et procreanda.*”

In the 14th and 15th centuries, many deeds of personal enfranchisement bear the following preamble:—“Seeing that in the beginning God made all by nature free, and that afterwards the law of nations placed certain of them under the yoke of servitude, we think it would be pious and meritorious in the sight of God to liberate such persons to us subjected in villanage, and to free them entirely from such services. Know therefore, that we have freed and liberated from all yoke of servitude — our knaves, of the manor of —, them and their children, born or to be born.”

This is extracted from *Thierry's History of the Norman Conquest*, pp. 288, 293. The former refers to Madox Form. Angl.

It is remarkable, that at the present day, in many of the manors of the Bishop of Durham, the copyholders are admitted to hold them and their *sequels* in right.

RECORDS IN THE TOWER OF LONDON.

“The earliest records now extant in the Tower are the Cartæ Antiquæ, the Charter and Oblata Rolls of the first year of King John, the Liberate Rolls of the second year, the Patent Rolls of the third year, and the Clause or Close Rolls, and the Fine Rolls of

the sixth year of King John: all which are Records of the Chancery.

“These records, together with the Returns of the Knights and Burgesses to Parliament, the Petitions and Proceedings in Parliament, all matters relating to the See of Rome, the Rolls of Scotland, Treaties of Peace and Instructions to Ambassadors, Inquisitions post Mortem, and a variety of other instruments, forming a collection of memorials of great national importance, were, at the early periods noted in the margin, preserved in the archives of the Court of Chancery in the King's Treasuries.

“The records of the King's Courts have been termed by Parliament, “not only the Records of the King and Kingdom, but the Evidence of every particular Man's Right.”

“They have been deemed a part of the king's treasure.

“In a case in the Year Books 11 Edward IV., respecting the office of Chamberlain of the Exchequer, it is said, “Cest office est une grand office, car il gardera le tresour del Roy, s. les Recordes.”

“So in the recital of Queen Elizabeth's warrant to the then Master of the Rolls, for the removal of the Records of Chancery to the Tower, the Queen styled them “a principal Membre of the Threasure belonging to Ourself, to our Corone and Realme.”

“The place wherein the Records of Chancery were repositied at the Tower was called the King's Treasury.

“The repositories wherein the records of the different Courts at Westminster now lie, are to this day called the Treasuries, viz. the King's Bench Treasury, the Common Pleas Treasury, and the Treasury of the Receipt of the Exchequer.

“The Chancellor, who was “Chef de la Chapele le Roy,” sat frequently in Chancery in chapels and cathedrals, and the Records of the Court of Chancery have been repositied either in chapels, cathedrals, or the King's Treasuries.”

LIST OF NEW PUBLICATIONS.

Daniel's Present Practice of the Court of Chancery. Vol. 3, Part I. Price 14s.

Williams' Executors and Administrators. 3d edit. Price 3*l.* 3*s.*

Maugham's Outlines of Common Law, Equity, and Bankruptcy. 2d edit. Vol. 1, in two Parts. Price 5*s.* each, or together 10*s.*

Macpherson's Law of Infants. Part I. Price 12*s.*

Collins on the Stamp Laws. Price 1*l.* 1*s.*

Rouse's Practical Man. 4th edit., with numerous additions. Price 7*s.* 6*d.*

Curtis's Maritime Law. Price 1*l.* 1*s.*

Rouse's Manual for Election Agents. Price 5*s.* 6*d.*

Rouse's Copyhold Commutation Act, and Practice. Price 7*s.*

Wharton's Police Law of the Metropolis. Price 2*s.* bound, 1*s.* 6*d.* sewed.

INCORPORATED LAW SOCIETY.

MEMBERS ADMITTED.

Edwin Eddison, Leeds.
 Henry Smith Lawford, Draper's Hall.
 Charles Molloy, 8, New Square Lincoln's
 Inn.
 William Simmons, Inner Temple.
 James Terrell, Exeter.
 William Edward Tugwell, Devizes.

MASTERS EXTRAORDINARY IN
CHANCERY.

From 27th July, to 20th August, 1841, both inclusive, with dates when gazetted.

Ingram, John Richard, Halifax, York. Aug. 17.
 Pain, John, Dover. Aug. 13.
 Poole, Joseph Ruscombe, jun., Bridgwater, Somerset. July 30.
 Welby, George Augustus, Nottingham. July 30.

DISSOLUTIONS OF PROFESSIONAL PART-
NERSHIPS.

From 27th July, to 20th August, 1841, both inclusive, with dates when gazetted.

Clarke, William Lewton, William Clarke, and Charles Stewart Clarke, Bristol, Attorneys, Solicitors, and Notaries Public. Aug. 6.
 Gore, John Brownrigg, and Daniel Lewellin, Rolls Chambers, Chancery Lane, Attorney and Solicitors. Aug. 6.
 Dickinson, John, and Francis Ayerst, Great Tower Street, London, and of Jamaica Place, Limehouse, Middlesex, Attorneys. Aug. 17.
 Hayward, John, and Thomas Brame Browne, Dartford, Kent, and Gray's Inn Square, Attorneys and Solicitors. July 30.
 Luttly, Beaumont Charles, John Coles Fourdrinier, and William Adams Morse, Dyer's Hall, London, Attorneys and Solicitors. Aug. 17.
 Shuttleworth, Richard, John Holgate, and William Roberts, Rochdale, Lancaster, Attorneys and Solicitors. July 27.
 Simpson, John, and Henry Moor, Farnival's Inn, Holborn, Attorneys and Solicitors. Aug. 10.
 Smale, Charles, and Harry Arthur Harvie, Bideford, Devon, Attorneys, Solicitors, and Conveyancers. Aug. 13.
 Thompson, George, and Edward Creswell, Manchester, Attorneys, Solicitors, and Conveyancers. Aug. 13.

BANKRUPTCIES SUPERSEDED.

From 27th July, to 20th August, 1841, both inclusive, with dates when gazetted.

Evans, George, Llanboidy, Carnarvon, Draper. Aug. 20.
 Harlow, John, Macclesfield, Chester, Ironmonger. July 27.

Irving, George Pocock, late of Stockton-upon-Tees, Durham, but now of Rotherhithe, Surrey, Ship Builder. Aug. 17.

Lait, William, Newport, Berkeley, Gloucester, Victualler. Aug. 3.

Latham, John, Baln, near Snaith, York, Seed Merchant and Farmer. Aug. 3.

Pickstock, Thomas, Clement's Lane, London, Merchant. Aug. 13.

Southall, Richard, jun., Birmingham, Factor. Aug. 20.

Wetslar, Alexander, and Julius Wetslar, Nottingham, Lace Manufacturers. Aug. 6.

Worsfold, William, Margaret Street, Cavendish Square, and of Wells Mews, Wells Street, Coach Smith and Spring Maker, and Patent Axle-tree Maker. Aug. 20.

BANKRUPTS.

From 27th July, to 20th August, 1841, both inclusive, with dates when gazetted.

Armitage, Samuel Harrison, Wakefield, York, and Matthew Dodgson, Manchester, Malsters and Corn Factors. *Adlington & Co.*, Bedford Row; *Taylor & Co.*, Wakefield. Aug. 3.

Anton, George, and George Duncan Mitchell, Corn Exchange, Mark Lane, London, Corn Factors. *Cannan*, Off. Ass.; *Amory & Co.*, Throgmorton Street. Aug. 13.

Atkinson, Thomas, Lancaster, Druggist and Grocer. *Robinson & Co.*, Lancaster; *Makin* & Co., Temple. Aug. 17.

Bradley, Jonas, Huddersfield, York, Iron Merchant. *Walter & Co.*, Symond's Inn, Chancery Lane; *Tolson*, Bradford. July 27.

Brooks, John, Baptist Mills, Bristol, British Sugar Manufacturer. *White & Co.*, Bedford Row; *Messrs. Bevan*, Bristol. Aug. 10.

Blood, Michael, North Audley Street, Grosvenor Square, Surgeon and Apothecary. *Whitmore*, Off. Ass.; *Milne & Co.*, Temple. Aug. 20.

Brett, Robert, Stoke Bardolph, Gedling, Nottingham, Corn Factor. *Willis & Co.*, Tokenhouse Yard; *Wagstaffe*, Grantham. Aug. 20.

Clemetson, John, Upper Thames Street, London; Grocer. *Whitmore*, Off. Ass.; *Sandys & Co.*, Serjeant's Inn, Fleet Street. July 30.

Chadwick, Samuel, Heywood, Heap, Lancaster, Cotton Spinner and Manufacturer. *Clark & Co.*, Lincoln's Inn Fields; *Grandy*, Bury. July 30.

Cave, Thomas, Jun., Liverpool, Merchant. *Law & Co.*, Liverpool; *Hardisty & Co.*, Great Marlborough Street. July 30.

Clittenden, Jeremiah, Jun., Three Tuns Court, Southwark, Surrey, Hop Factor. *Atton & Co.*, New Broad Street. Aug. 3.

Cross, Cornelius, Bristol, Tea Dealer, French, Saint Swithin's Lane; *Smith*, Bristol. Aug. 3.

Clifton, Henry, Bath Lodge, Worcester, Proctor. *Hydes & Co.*, Worcester; *Hall*, New Bowell Court, Lincoln's Inn. Aug. 13.

Cloughton, Nathaniel, Dixon Mill, Yeaton, York, Fulling Miller. *Batye & Co.*, Chancery Lane; *Higham*, Brighouse, near Halifax. Aug. 17.

Crutchett, James, Stroud, Gloucester, Pawnbroker and Clothes Salesman. *Skewman & Co.*, Gray's Inn Square; *Herbert*, Painswick; or *Paris*, Stroud. Aug. 17.

Casacuberta, Anne, Manchester, Merchant. *Norris*

- & Co., Bartlett's Buildings; Norris, Manchester. Aug. 17.
- Cooke, Robert, Great George Street, Bermondsey, Surrey, Cooper. *Cannan*, Off. Ass.; *Vincent & Co.*, Temple. Aug. 20.
- Debenham, George Edward, Bayham Street South, Camden Town, Builder. *Whitmore*, Off. Ass.; *Manning & Co.*, Dyer's Buildings, Holborn. Aug. 6.
- Darcy, John, and Richard Dierden, Sutton, Lancaster, Alkali Manufacturers. *Norris*, Liverpool; *Norris & Co.*, Bartlett's Buildings. Aug. 17.
- Duncan, Angus, and Charles Duncan, Tokenhouse Yard, London, Merchants. *Johnson*, Off. Ass.; *Parker*, St. Paul's Church Yard. Aug. 20.
- Emery, Edgar, Islington Green, Victualler. *Graham*, Off. Ass.; *Gale*, Basinghall Street. July 30.
- Farr, Thomas, Manchester, Silk Manufacturer. *Johnson & Co.*, Temple; *Bagshaw & Co.*, Manchester. Aug. 10.
- Ford, Harris, Manchester, Linen Draper. *Turner & Co.*, Basing Lane; Messrs. *Bennett*, Manchester. Aug. 10.
- Forster, Abraham, Bridgewater, Somerset, Draper. *Jenkins & Co.*, New Inn; Messrs. *Clarke*, Bristol. Aug. 13.
- Fawcett, William, Manchester, and of Colne, Lancaster, and also of the City of London, Manufacturer. *Hensman*, Basing Lane, London; Messrs. *Bennett*, Manchester. Aug. 17.
- Gairn, John, Preston, Lancaster, Machine Maker. *Mayhew & Co.*, Carey Street, Lincoln's Inn; *Blackhurst & Co.*, Preston. July 27.
- Garney, Henry, Upper Lisson Street, Lisson Grove, Victualler. *Whitmore*, Off. Ass.; *Sawyer*, Bow Lane, Cheapside. July 30.
- Greenaway, Henry, Bristol, Painter, Plumber and Glazier. *Mukinson & Co.*, Temple; *Haberfeld*, Bristol. Aug. 6.
- Gruburn, William, Downham Market, Norfolk, Coal Factor. *Adlington & Co.*, Bedford Row; *Spurgeon*, King's Lynn; *Taylor & Co.*, Wakefield. Aug. 6.
- Heap, John, jun., Manchester, Merchant, Commission Agent, Calico Printer, and Cotton Manufacturer. *Makinson & Co.*, Temple; *Atkinson & Co.*, Manchester. July 27.
- Haskayne, William, Liverpool, Ship Chandler. *Leigh*, George Street, Mansion House; *Leather*, Liverpool. July 27.
- Herrick, Henry, Prospect Place, Saint George's Road, Southwark, Victualler. *Turgand*, Off. Ass.; *Sawyer*, Bow Lane, Cheapside. July 30.
- Harwood, Alexander Thomas, Streatham, Surrey, Lodging-house Keeper. *Graham*, Off. Ass.; *Maughan & Co.*, Chancery Lane. Aug. 6.
- Howson, Thomas, Leeds, York, Grocer. *Battye & Co.*, Chancery Lane; *Shackleton*, Leeds. Aug. 17.
- Holman, John, Burleigh Street, Strand, Victualler. *Cannan*, Off. Ass.; *Coote & Co.*, Austin Friars. Aug. 20.
- Jones, Richard Tunnard, Oxford, Chemist and Druggist. *Philpot & Co.*, Southampton Street, Bloomsbury; *Rackstraw*, Oxford. Aug. 6.
- Jennings, William, Bungay, Suffolk, Maltster and Merchant. *Clarke & Co.*, Lincoln's Inn Fields; *Margitson & Co.*, or *Smith*, Bungay. Aug. 6.
- Jones, Frederick, City Road, Middlesex, Draper. *Cannan*, Off. Ass.; *Humphreys*, Queen Street, Cheapside. Aug. 17.
- Lloyd, John, and William Lloyd, Atherstone, Warwick, Builders, Upholsterers and Cabinet Makers. *Hawkins & Co.*, New Boswell Court, Carey Street; *Power & Co.*, Atherstone. July 27.
- Llewellyn, Llewellyn, Aberdare, Glamorgan, Maltster. *Savery & Co.*, Bristol; *Hornby & Co.*, Saint Swithin's Lane. July 30.
- Last, George, Birmingham, General Merchant. *Amphlett*, Birmingham; *Adlington & Co.*, Bedford Row. Aug. 10.
- Losh, William, and John Losh, Manchester, and of the city of Carlisle, Calico Printers. *Abbott & Co.*, Charlotte Street, Bedford Square; *Bennett & Co.*, Manchester. Aug. 13.
- Lampert, William Henry, Plymouth, Devon, Silversmith and Jeweller. *Whitmore*, Off. Ass.; *Lloyd*, Cheapside. Aug. 17.
- Lewis, John Frederick, Ebbley, near Stroud, Gloucester, Woollen Cloth Manufacturer. *Cannan*, Off. Ass.; *Fenning & Co.*, Tokenhouse Yard. Aug. 17.
- Lea, James, sen., and Thomas Patrick, Worcester, Butchers. *White & Co.*, Bedford Row; *Finch & Co.*, Worcester. Aug. 20.
- Mann, Peter, Leeds, York, Army Contractor and Maltster; and lately of Richmond, York, Brewer. *Smithson & Co.*, Southampton Buildings, Chancery Lane; *Dunning & Co.*, Leeds. Aug. 3.
- Medley, Henry, and William Backhouse, Leeds, York, Oil Merchants. *Lambert*, Raymond Buildings, Gray's Inn; *Snowden & Co.*, Leeds; or *Smith*, Leeds. Aug. 17.
- Maybery, Charles, Earl's Court, Old Brompton, Middlesex, Board and Lodging-house Keeper, Apothecary, Seller of Tincture and Brushes for Teeth, and Scrivener. *Whitmore*, Off. Ass.; *Parsons*, Temple Chambers, Fleet Street. Aug. 20.
- Nelson, Horatio, Pendleton, Lancaster, Provision Shopkeeper and Beerseller. *Sutton*, Manchester; *Milne & Co.*, Temple. Aug. 10.
- Newham, James, and George Pearson, Ryde, Isle of Wight, Southampton, Linen Drapers. *Hardwick & Co.*, Cateaton Street; *Randall & Co.*, Southampton. Aug. 13.
- Newton, George, Martock, Somerset, Builder; *Cragg*, Harpur Street, Red Lion Square; *Vining*, Yeovil. Aug. 13.
- Nutter, Thomas, Paul Street, Finsbury Square, Brewer. *Cannan*, Off. Ass.; *Taylor & Co.*, Bedford Row. Aug. 17.
- Patterson, James, Cataton Street, London, Warehouseman and Linen Factor. *Whitmore*, Off. Ass.; *Simpson & Co.*, Austin Friars. July 27.
- Porter, Thomas, Liverpool, Egg Merchant and Fish Dealer. *Cornthwaite*, Dean's Court, Doctor's Commons; *Cornthwaite*, Liverpool. July 27.
- Pickstock, Thomas, Clement's Lane, London, Merchant. *Graham*, Off. Ass.; *Sawyer*, Bow Lane, Cheapside. July 30.
- Pidgeon, Orlando, Shrewsbury, Salop, Tobacco-nist. *Hawkins & Co.*, New Boswell Court, Lincoln's Inn; *Edwards*, Shrewsbury. July 30.
- Peart, Robert, Newark-upon-Trent, Nottingham, Rope Maker and Flax Dresser. *Lee*, Newark-upon-Trent; *Milne & Co.*, Temple. July 30.
- Radford, Elizabeth Caroline, Joshua Radford and Joseph Radford, Manchester, Ironfounders and Ironmongers. *Johnson & Co.*, Temple; *Kershaw*, Manchester. Aug. 3.

- Robinson, Leonard, formerly of Quisburn, York, Grazier, and now of Orley, York, Innkeeper. *Hawkins & Co.*, New Boswell Court, Lincoln's Inn. *Turner*, Orley. Aug. 3.
- Stanley, George, Portland Place, Kensington, Middlesex, and of Great Winchester Street, London, afterwards of Gloucester Street, Portman Square, Middlesex, and now of Southampton, Manufacturer of Bituminous Pavement. *Turgand*, Off. Ass.; *Lambert*, Raymond Buildings, Gray's Inn. July 27.
- Sarson, Benjamin, Birmingham, and of Dudley Port, Stafford, Ironmaster. *Chaplin*, Gray's Inn Square; *Richards*, Birmingham. July 27.
- Sims, Davis, Portsmouth Place, Lower Kennington Lane, Surrey, Fish Sauce and Pickle Dealer. *Cannan*, Off. Ass.; *Field*, Finchley, Middlesex. July 30.
- Smith, Thomas, Preston, Lancaster, Flagger and Slater. *Chester*, Staple Inn; *Armstrong & Co.*, Preston. July 30.
- Sowerby, Judah, Leeds, York, Victualler and Innkeeper. *Naylor*, Leeds; *Battye & Co.*, Chancery Lane. Aug. 6.
- Stubbs, Frederick, Caistor, Lincoln, Linen Draper and Grocer. *Hardwick & Co.*, Cateaton Street; *Morris & Co.*, Caistor. Aug. 6.
- Stocks, Samuel, sen., and Samuel Stocks, jun., Heaton Mersey, Heaton Norris, Manchester, Manufacturers, Bleachers, and Dyers. *Hadfield*, Manchester; *Johnson & Co.*, Temple. Aug. 6.
- Scholes, Geo. Barlow, Loctock Hall, Lancaster, Muslin Manufacturer. *Law*, Manchester; *Adlington & Co.*, Bedford Row. Aug. 10.
- Smith, James, Thomas Edgley, and Bryce Smith, Manchester, Scotch and Manchester Warehousemen, Hosiery and Lace-men. *Sal & Co.*, Manchester; Messrs. *Baxter*, Lincoln's Inn Fields. Aug. 13.
- Stuchfield, Edward, Church Street, Paddington Green, Middlesex, Horse Dealer. *Whitmore*, Off. Ass.; Messrs. *Bicknell*, Manchester Street. Aug. 17.
- Squibb, Richard Craddock, East Cowes, Isle of Wight, Southampton, Rope Maker. *Lambert*, Raymond Buildings, Gray's Inn; *Hearn*, Newport, Isle of Wight; or *Hoskins*, Gosport and Portsmouth. Aug. 20.
- Twisse, James, Manchester, Power Loom Cloth Manufacturer. *Bower & Co.*, Chancery Lane; *Russell*, Manchester. July 30.
- Thomson, Archibald, Leadenhall Street, London, Merchant. *Turgand*, Off. Ass.; *Powys*, Staple Inn. Aug. 6.
- Tagg, Peter, Tooley Street, Southwark, Surrey. Slop Seller and Corn Merchant. *Turgand*, Off. Ass.; *Parnter & Co.*, Fenchurch Street. Aug. 6.
- Taylor, Thomas, Royston, Hertford, Innkeeper. *Whitmore*, Off. Ass.; *Church*, Bedford Row; *Nash & Co.*, Royston. Aug. 10.
- Thompson, George, South Shields, Durham, Victualler and Ship Owner. *Hodgson*, Broad Street Buildings. *Wilson or Wawn*, South Shields. Aug. 13.
- Trapps, Charles, Abridge, Lambourne, Essex, Victualler. *Whitmore*, Off. Ass.; *Ling & Co.*, Bloomsbury Square. Aug. 17.
- Timings, Richard Robertson, Birmingham, Warwick, Grocer. *Whitecock*, Aldermanbury; *Suckling*, Birmingham. Aug. 20.
- Wardall, Mary, Carey Street, Lodging-house Keeper. *Graham*, Off. Ass.; *Webb*, Carey Street. July 27.
- Woods, James, Roundhill, Lancaster, Cattle Jobber and Horse Dealer. *Cragg*, Harpur Street, Red Lion Square; *Robinson*, Blackburn. July 27.
- White, William, and Thomas Broad, Newport, Isle of Wight, Wine and Brandy Merchants, *Dimmock*, Size Lane, Bucklersbury; *Allen*, Newport. July 27.
- Wise, Ayshford, Fordhouse, Woborough, Devon, Nicholas Baker, of Newton Busbel, Highweek, Devon; and William Searle, of Totnes, Devon, Bankers. *Pearce*, Newton Abbott; *Whitway*, George Street, Mansion House; *Church*, Bedford Row. July 30.
- Wright, Samuel Newell, Woburn, Bucks, Paper Manufacturer. *Graham*, Off. Ass.; *Smith*, Golden Square. Aug. 3.
- Wood, Henry, and Alfred Wood, Basinghall Street, London, Blackwell Hall Factors and Dealers in Woollen Clothes. *Whitmore*, Off. Ass.; *Gale*, Basinghall Street. Aug. 6.
- Wise, Ayshford, Ford House, Woborough, Devon, William Searle Bentall, Totnes, Devon, and Robert Farwell, of Totnes, Devon, Bankers and Money Scriveners. *Edwards*, Totnes; *Froude & Co.*, Lincoln's Inn Fields. Aug. 6.
- Warren, John Alexander, and John Fordham Taylor, Little Hermitage Street, Saint George's in the East, Ship Chandlers. *Cannan*, Off. Ass.; *Walton*, Wapping Street. Aug. 10.
- Wilson, Thomas, Liverpool, Fancy Shawl Dealer. *Evans*, Liverpool; *Oliver*, Old Jewry. Aug. 10.
- White, Joseph, East Cowes, Isle of Wight, Southampton, Ship Builder. *Lambert*, Raymond Buildings, Gray's Inn; *Hoskins*, Portsmouth. Aug. 13.
- Wright, Benjamin, Coalbrookdale, Madeley, Salop, Draper and Grocer. *Biggs*, Southampton Buildings, Chancery Lane; *Potts*, Iron-bridge, Salop. Aug. 17.
- Warburton, Henry, Harpurhey, Manchester, Joiner and Builder. *Johnson & Co.*, Temple; Messrs. *Wood*, Manchester. Aug. 20.

PRICES OF STOCKS.

Tuesday, Aug. 24, 1841.

Bank Stock div. 7 per Cent.	- - - - -	168
3 per Cent. Reduced	- - - - -	89½ s. ½
3 per Cent. Consols Annuities	- - - - -	89½ s. ½
3 per Cent. Annuities 1726	- - - - -	88
3½ per Cent. Reduced Annuities	- - - - -	99 s. 8½
New 3½ per Cent. Annuities	- - - - -	98½ s. ½
New 5 per Cent.	- - - - -	116
Long Annuities, expire 5th Jan. 1860	- 12½ s. ½	
Annuities for thirty years, expire 10th October 1859	- - - - -	12½
Ditto 5th Jan. 1860	- - 12½ s. ½	
India Stock div. 10½ per Cent.	- - - - -	217
Ditto Bonds 3½ per Cent.	- - - - -	3s. 6s. pm.
3 per Cent. Cons. for account 26th Aug.	- - - - -	89½
Exchequer Bills 1000 <i>l.</i> 2½ <i>d.</i>	- 15s. 17s. pm.	
Ditto 500 <i>l.</i> do.	- 15s. 17s. pm.	
Ditto Small do.	- 15s. 18s. pm.	

The Legal Observer.

SATURDAY, SEPTEMBER 4, 1841.

—“ Quod magis ad nos
Pertinet, et nescire malum est, agitamus.

HORAT.

THE NEW MINISTRY.

It is this week our duty, as the faithful chroniclers of all legal events, to record that a change has taken place in some of the highest offices of the law. Lord Cottenham has ceased to be Lord Chancellor, and the Great Seal has been delivered to Lord Lyndhurst. Sir Thomas Wilde has ceased to be Attorney General, and if there had been a Solicitor General, he also would doubtless have retired. At the time that we write this, we believe that the new Attorney and Solicitor Generals are not positively appointed.

There is a wish, we understand, on the part of the new Premier, if it be possible, to reward the eminent services of Sir William Follett, by making him the first law officer of the Crown; but it is obvious that if this were done to the prejudice of Sir Frederick Pollock, it would be uncourteous and unjust. If haply, therefore, a vacancy on the bench were opportunely to occur, an arrangement might be made which would meet the justice of the case. The opportunity may be also given by a speedy passing of the Equity Judges Bill, and this does not appear so improbable. Mr. Baron Rolfe might be induced to take one of these judgeships, and a vacancy might in this way be made for Sir Frederick Pollock. But this is mere speculation, and we believe that the present arrangement will be that Sir F. Pollock will be Attorney and Sir W. Follett Solicitor General.

Another vacancy is not yet filled up, the Lord Chancellorship of Ireland. Is Sir Edward Sugden to go there, or will he take one of the new Equity judgeships? These are questions we hear on all sides, but which we cannot answer.

We have from the commencement of this work endeavoured to do justice to the commanding judicial ability displayed by Lord Lyndhurst. As the champion of the profession, he has also no mean claim to its gratitude and respect. As lawyers, therefore, we hail his third accession to the woolsack with pleasure. Still, however, we are sure we are but expressing the general feeling of all parties when we say, that it is greatly to be regretted that the services of Lord Cottenham are to be lost to the public. As a politician we need say nothing here respecting him, but as a judge, his services have been invaluable;—his learning considerable, his acuteness vast, his patience inexhaustible, his power of disposing of business unrivalled. If his political career has not been brilliant, it has been at any rate unsullied by intrigue,—a vice to which Lord Chancellors are peculiarly prone;—and in judicial eminence he takes his stand with the Nottinghams, the Hardwicks, and the Grants.

We cannot but consider that we are now entering upon an important era in legal reform. Our present number will show that the new parliament have commenced very busily in this respect, and we shall be surprised if it stops here. We shall shortly review these various bills which in whole or in part will, as we believe, be adopted by the new administration.

RESPONSIBILITY FOR THE ACTS OF A CO-EXECUTOR.

THE rules with respect to one executor allowing another to misapply the assets of the testator, may here be stated. If one of two executors or administrators improperly applies the trust funds, this shall not charge his companion, if the latter has in no way contributed to it; for the testator's having misplaced his confidence in one, shall not operate to the prejudice of the other.^a Hence an executor shall not, under ordinary circumstances, be responsible for the assets come to the hands of his co-executor.^b

But where by any act done by one executor, any part of the representative estate comes to the hands of his co-executor, the former will be answerable for the latter, in the same manner as he would have been for a stranger, whom he had entrusted to receive it.^c Where, however, an executor is merely passive, by not obstructing his co-executor from getting the assets into his possession, the former is not responsible.^d If, however, the one in any way contributes to enable the other to obtain possession, he is answerable, although his motive be innocent, unless he can assign a sufficient excuse.^e But a different rule obtains in Courts of Equity with respect to trustees. A trustee who stands by, and sees a breach of trust committed by his co-trustee, becomes responsible for that breach of trust. Thus, where a testator bequeathed to his partner, and one Batkin, his personal estate, upon trust to invest the same for the benefit of his wife and children, both the executors proved the will, and the surviving partner retained the testator's monies in the trade which were lost. Batkin took no active part in the trusts, but was cognizant of the breach of trust, and took no proceedings to prevent it; and Lord *Langdale*, M. R., held that Batkin was responsible for the consequences of the breach of trust;^f and the same, learned Judge has very recently laid down some principles with respect to executors, which deserve attention. Two executors were directed, after making some annual

payments, to invest and accumulate the surplus. One of the executors received the dividends of stock for several years, and misapplied them; it did not appear that the other executor had any knowledge thereof, and Lord *Langdale* held that the latter was not answerable for the breach of trust; but his Lordship laid down the following general principles in his judgment as applicable to executors. "There can be no doubt that if an executor knows that the monies received by his co-executor are not applied according to the trusts of the will, and stands by and acquiesces in it, without doing anything on his part to procure the due execution of the trusts, he will in respect of that negligence, be himself charged with the loss; but in cases of this kind it is always to be observed that the testator himself, having invested certain persons with the character of executors, has trusted them to the extent to which the law allows them to act as executors; and in character each has a separate right of receiving and of giving discharges for the property of the testator. In this particular case, the testator having money in the funds, and other property to a considerable amount, directed certain annuities to be paid, and bequeathed his residuary estate in the mode stated. Both executors proved the will, and thereupon each of them became entitled to receive the property. One of them did receive the property—the dividends upon the stocks and funds of the other personal estate. If Mr. Nixon knew that his co-executor was misapplying the monies thus received, and acquiesced in it, he became himself liable; because he was a witness and an acquiescing party to the misapplication or breach of trust; but if he was not aware of the misapplication, I know of no case in which the Court has gone the length of saying that an executor shall be held personally answerable for standing by and permitting his co-executor to do that, which, for anything he knows to the contrary, was a performance of the trusts of the will. In this case it is clear Mr. Nixon must have known there was stock in the funds. He might have known that the dividends arising from that stock were from time to time received by Mr. Mills; knowing that, he might, nevertheless, have full reason to believe that they were duly applied, according to the trusts and directions of the will, in satisfaction of the annuities, or of the rent of the leasehold estate possessed by the testator at his death, and which was payable out of the whole estate. The argument for the plaintiffs proceeds upon

^a *Harghurpe v. Milforth*, Cro. Eliz. 318.

^b Cro. Eliz. 319; 2 Wms. on Exors. 1419, 3d edit.

^c 2 Wms. on Exors. 1420.

^d *Langford v. Gascoyne*, 11 Ves. 335; Wms. on Exors. 1420.

^e *Ibid.*

^f *Booth v. Booth*, 1 Beav. 125. See this case fully stated 18 L. O. 386.

this, that you are to impute to Mr. Nixon a knowledge of all that he might have known. It is said he proved the will, and must therefore have known its contents, and what was to be done in pursuance of the trusts; this is a presumption which I think the law itself will draw, and he must therefore be taken to have known the contents of the will. Then it is argued, that on proving the will, he was bound to make a statement upon oath respecting the value of the property, and therefore became acquainted with the particulars. He might have had some knowledge of it to the limited extent which can be known on such occasions; but I cannot impute to him a knowledge of the exact state or amount of the property or of the claims upon it, or the clear amount of the balance in the hands of his co-executor. I certainly do not recollect any case, in which the principle has been carried to the extent to which it has been here pressed; and if in this case I were to charge Mr. Nixon generally with all the assets received by his co-executor, I must in every case say, that an executor who does not personally act, and who having no reason to suspect any misapplication by his co-executor, permits him to act alone, is liable for every misapplication committed by his co-executor; I do not think I can lay down any such rule."

It is important that executors should bear in mind these principles, as they seem to bear somewhat more stringently on them than those laid down in previous decisions. It has been frequently laid down, that a passive executor, although cognizant of the acts of his co-executor; was not responsible; but, according to this decision, the question hinges on the *knowledge* of the co-executor of the act of his companion.

THE NEW CHANCERY ORDERS.

THE new Orders under stats. 3 & 4 Vict. c. 94, and 4 & 5 Vict. c. 52, *post*, 376, have at length appeared, and we print them *verbatim* in a subsequent part of this number. The changes which they will effect are not so extensive as was anticipated. Still they will make alterations in many parts of the present system of practice and pleading, and must be mastered by any practitioner in the Court of Chancery. It is to be observed, that they are signed only by the Lord Chancellor, and the Master of the Rolls, but it does not necessarily follow that

they have not the approval of the Vice Chancellor. The acts empower the Lord Chancellor, with any one of the other Equity Judges, to make the necessary orders.

The Orders are dated the 26th August, 1841, and are to come into operation on the last day of Michaelmas Term next.

The following is an analysis of the orders.

Service of Notices, &c.

The 1st, 2d, 3d, 4th, and 5th sections provide for the service of notices, orders, warrants, &c., at the place of business of the solicitor, instead of the Six Clerks' Office, and for this purpose a solicitor's book of residence is to be kept. Notices may also, by consent, be sent by the post.

Appearance.

In lieu of attaching a defendant for not appearing, the plaintiff, after the time has expired, may enter an appearance for him. This is similar to the Common Law Practice of entering an appearance "according to the statute," ss. 7, 8. See also section 14.

Enforcing Orders.

The Orders of the Court are to be obeyed, without the necessity of issuing writs to enforce them. This alteration is effected by sections 6, 10, 11, 12, 13.

Persons who are *not* parties to a cause, may be compelled to obey orders, or may enforce them, in the same way as if they were parties (s. 15.)

Answers.

On a return by the Sheriff of *non est inventus* to an attachment, for not answering, the plaintiff may have a writ of sequestration (s. 9).

Defendants are only to answer such interrogatories in a bill as may be required, and the bill is to specify the interrogatories which each defendant is to answer (ss. 16, 17, 18, 19).

The time for answering, &c., is to be the same in country causes as now in town causes (s. 20).

Pleadings.

If the defendant does not plead, answer, or demur, the plaintiff may, on giving notice, proceed as if the defendant had traversed the case in the bill (ss. 21, 22).

Where no account, payment, conveyance, &c., is required from a party to a suit,

the plaintiff may serve him with the bill, and proceed without requiring an appearance or answer (ss. 23, 24, 25.)

Where such party desires that the suit should proceed in the ordinary way, he shall be liable to costs (ss. 26, 27, 28).

And where such party is required by the plaintiff to answer, the plaintiff will be liable to costs (s. 29).

Where a *demurrer* or plea is overruled, the plaintiff may proceed under s. 23, without calling for an answer (s. 33). See also as to demurrers and pleas, ss. 34 to 37, inclusive, and as to answering in part and not demurring, s. 38.

Want of Parties.

Provisions are made to prevent delay on account of the want of parties; see sections 89 and 40.

In suits concerning real estates and wills, the persons beneficially interested, and heirs at law, need not be made parties (ss. 30, 31).

And, by s. 32, a plaintiff may proceed against one of several parties, where the demand is joint and several.

Cross Bills.

Section 41 relates to the costs of Cross Bills, which are to be in the discretion of the Court; and section 42 regulates the reading of answers to Cross Bills.

Evidence.—Decrees.

The 43d section provides for proving exhibits by affidavits, instead of *vivd voce* testimony. And by section 44 a decree is made absolute in the first instance, if the defendant makes default, and on a decree for an account the Master is to state what part of the estate is outstanding (s. 45).

Creditors.

By the 46th section creditors are to be entitled to 4 per cent. after the costs are satisfied: and by section 47 are to have the costs of proving their debts.

Shortening Reports, Bills, &c.

The Master's reports are to refer to affidavits, depositions, &c., and not to state or recite them (s. 48).

Bills of revivor and supplemental are not to set forth the statements in the original suit (s. 49). And petitions for rehearing are not to state the proceedings anterior to the decree, &c. (s. 50).

These Rules, Orders, and Regulations,

were laid before the House of Lords on the 27th August, and ordered to be printed.

ORDER OF COURT.—26th August, 1841.

THE Right Honourable *Charles Christopher Lord Cottenham*, Lord High Chancellor of Great Britain, by and with the advice and assistance of the Right Honourable *Henry Lord Langdale*, Master of the Rolls, doth hereby, in pursuance of an act of parliament, passed in the 4th year of the reign of her present Majesty, [c. 94.] intituled "An Act for facilitating the Administration of Justice in the Court of Chancery," and of an act passed in the fourth and fifth years of the reign of her present Majesty, [c. 52.] intituled "An Act to amend an Act of the Fourth Year of her present Majesty, intituled 'An Act for facilitating the Administration of Justice in the Court of Chancery,'" order and direct in manner following: that is to say,—

I. That there shall forthwith be prepared a proper alphabetical book for the purposes after mentioned, and that such book shall be called the solicitor's book, and shall be publicly kept at the office of the Six Clerks, to be there inspected without fee or reward.

II. That every solicitor, before he practise in this Court, in his own name solely, and not by an agent, whose name shall be duly entered as after mentioned, and every solicitor, before he practise as such agent, shall cause to be entered in the solicitor's book, in alphabetical order, his name and place of business, or some other proper place in London, Westminster, or the borough of Southwark, or within two miles of Lincoln's Inn Hall, where he may be served with writs, notices, orders, warrants, rules, and other documents, proceedings, and written communications in causes and matters depending in this Court; and as often as any such solicitor shall change his place of business or the place where he may be served as aforesaid, he shall cause a like entry thereof to be made in the solicitor's book, and that the above mentioned entries shall be made in such book by the said Six Clerks, who shall be entitled to a fee of one shilling for every such entry; and that the fund arising from such payment shall be applied, in the first instance, in paying the expences of providing and keeping such book.

III. That all writs, notices, orders, warrants, rules, and other documents, proceedings, and written communications, which do not require personal service upon the party to be affected thereby, shall be deemed sufficiently served if such document, or a copy thereof, as the case may be, shall be left at the place lastly entered in the solicitor's book by the solicitor of such party; and if any solicitor shall neglect to cause such entry to be made in the solicitor's book as is required by the second order, then

* See this last Act, p. 376, *post*.

the fixing up a copy of any such writ, notice, order, warrant, rule, or other document, proceeding, or written communication for such solicitor in the said Six Clerks' Office, shall be deemed a sufficient service on him, unless the Court shall, under special circumstances, think fit to direct otherwise.

IV. That if any solicitor shall give his consent in writing that the service of all or any writs, notices, orders, warrants, rules, or other documents may be made upon him through the Post-Office or otherwise, such service shall be deemed sufficient if made in such manner as such solicitor shall have so agreed to accept; but it shall be competent for any solicitor giving such consent, at any time to revoke the same by notice in writing.

V. That no person shall be allowed to appear or act, either in person, by solicitor or counsel, or to take any proceedings whatever in this Court, either as plaintiff, defendant, petitioner, respondent, party intervening, or otherwise, until an entry of the name of his solicitor and his solicitor's agent, if there be one, or if he act in person, his own name and address for service shall have been made in the solicitor's book at the office of the Six Clerks; but if such address of any person so acting in person, shall not be within London, Westminster, or the borough of Southwark, or within two miles of Lincoln's Inn Hall, then all services upon such person not requiring to be made personally, shall be deemed sufficient if a copy of the writ, notice, order, warrant, rule, or other document to be served, be transmitted to him through her Majesty's Post-Office, to such address as aforesaid.

VI. That no writ of attachment with proclamations, nor any writ of rebellion, be hereafter issued for the purpose of compelling obedience to any process, order, or decree of the Court.

VII. That no order shall hereafter be made for a messenger, or for the serjeant-at-arms, to take the body of the defendant for the purpose of compelling him to appear to the bill.

VIII. That if the defendant being duly served with a *subpœna* to appear to and answer the bill, shall refuse or neglect to appear thereto, the plaintiff shall, after the expiration of eight days from such service, be at liberty to apply to the Court for leave to enter an appearance for the defendant. And the Court, being satisfied that the *subpœna* has been duly served, and that no appearance has been entered by the defendant, may give such leave accordingly; and that thereupon the plaintiff may cause an appearance to be entered for the defendant. And thereupon such further proceedings may be had in the cause as if the defendant had actually appeared.

IX. That upon the sheriff's return, *non est inventus*, to an attachment issued against the defendant for not answering the bill, and upon affidavit made that due diligence was used to ascertain where such defendant was at the time of issuing such writ, and in endeavouring to apprehend such defendant under the same; and that the person suing forth such writ verily believed, at the time of suing forth the same,

that such defendant was in the county into which such writ was issued, the plaintiff shall be entitled to a writ of sequestration in the same manner that he is now entitled to such writ, upon the like return made by the serjeant-at-arms.

X. That no writ of execution, nor any writ of attachment shall hereafter be issued for the purpose of requiring or compelling obedience to any order or decree of the High Court of Chancery; but that the party required by any such order to do any act, shall, upon being duly served with such order, be held bound to do such act in obedience to the order.

XI. That if any party who is by an order or decree ordered to pay money, or do any other act in a limited time, shall, after due service of such order, refuse or neglect to obey the same according to the exigency thereof, the party duly prosecuting such order shall, at the expiration of the time limited for the performance thereof, be entitled to an order for a serjeant-at-arms, and such other process as he hath hitherto been entitled to upon a return, *non est inventus*, by the commissioners named in a commission of rebellion issued for non-performance of a decree or order.

XII. That every order or decree requiring any party to do an act thereby ordered, shall state the time after service of the decree or order within which the act is to be done; and that upon the copy of the order, which shall be served upon the party required to obey the same, there shall be endorsed a memorandum, in the words, or to the effect following; *viz.*—“If you, the within named *A. B.*, neglect to perform this order by the time therein limited, you will be liable to be arrested by the serjeant-at-arms attending the High Court of Chancery; and also be liable to have your estates sequestered for the purpose of compelling you to obey the same order.”

XIII. That upon due service of a decree or order for delivery of possession, and upon proof made of demand and refusal to obey such order, the party prosecuting the same shall be entitled to an order for a writ of assistance.

XIV. That the memorandum at the foot of the *subpœna* to appear and answer, shall hereafter be in the form following; that is to say—“Appearances are to be entered at the Six Clerks' Office in Chancery Lane, London, and if you do not cause your appearance to be entered within the time limited by the above writ, the plaintiff will be at liberty to enter an appearance for you; and you will be subject to an attachment and the other consequences of not answering the plaintiff's bill, if you do not put in your answer thereto within the time limited by the General Orders of the Court for that purpose.”

XV. That every person not being a party in any cause, who has obtained an order, or in whose favour an order shall have been made, shall be entitled to enforce obedience to such order by the same process as if he were a party to the cause; and every person, not being a party in any cause against whom obe-

dience to any order of the Court may be enforced, shall be liable to the same process for enforcing obedience to such order as if he were a party to the cause.

XVI. That a defendant shall not be bound to answer any statement or charge in the bill, unless specially and particularly interrogated thereto; and a defendant shall not be bound to answer any interrogatory in the bill, except those interrogatories which such defendant is required to answer; and where a defendant shall answer any statement or charge in the bill, to which he is not interrogated only by stating his ignorance of the matter so stated or charged, such answer shall be deemed impertinent.

XVII. That the interrogatories contained in the interrogating part of the bill, shall be divided as conveniently as may be from each other, and numbered consecutively, 1, 2, 3, &c., and the interrogatories which each defendant is required to answer, shall be specified in a note at the foot of the bill, in the form or to the effect following; that is to say,—“The defendant (*A. B.*) is required to answer the interrogatories numbered respectively 1, 2, 3, &c., and the office copy of the bill taken by each defendant shall not contain any interrogatories except those which such defendant is so required to answer, unless such defendant shall require to be furnished with a copy of the whole bill.

XVIII. That the note at the foot of the bill, specifying the interrogatories which each defendant is required to answer, shall be considered and treated as part of the bill, and the addition of any such note to the bill, or any alteration in or addition to such note after the bill is filed, shall be considered and treated as an amendment of the bill.

XIX. That instead of the words of the bill now in use preceding the interrogating part thereof, and beginning with the words “To the end therefore,” there shall hereafter be used words in the form or to the effect following: “To the end, therefore,—That the said defendants may, if they can show why your orator should not have the relief hereby prayed, and may, upon their several and respective corporal oaths, and according to the best and utmost of their several and respective knowledge, remembrance, information and belief, full, true, direct and perfect answer make to such of the several interrogatories hereinafter numbered and set forth as by the note hereunder written, they are respectively required to answer; that is to say,—”

1. Whether, &c.

2. Whether, &c.

XX. That a defendant in a country cause shall be allowed no further time for pleading, answering, or demurring to any original or supplemental bill, or bill of revivor, or to any amended bill, than is now allowed to a defendant in a town cause.

XXI. That after the expiration of the time allowed to a defendant to plead, answer, or demur (not demurring alone) to an original bill, if the defendant shall have filed no plea,

answer, or demurrer, the plaintiff shall be at liberty to file a note at the Six Clerks' Office to the following effect:—“The plaintiff intends to proceed with his cause as if the defendant had filed an answer, traversing the case made by the bill, and the plaintiff had replied to such answer, and served a *subpoena* to rejoin.” And that a copy of such note shall be served on such defendant in the same manner as a *subpoena* to rejoin is now served, and such note when filed (a copy thereof being so served), shall have the same effect as if the defendant had filed an answer, traversing the whole of the bill, and the plaintiff had filed a replication to such answer, and served a *subpoena* to rejoin. And after such note shall have been so filed, and a copy served as aforesaid, the defendant shall not be at liberty to plead, answer, or demur to the bill without the special leave of the Court.

XXII. That a plaintiff shall not be at liberty to file a note under the twenty-first order, until he has obtained an order of the Court for that purpose, which order shall be applied for upon motion, without notice, and shall not be made unless the Court shall be satisfied that the defendant has been served with a *subpoena* to appear and answer the bill; and that the time allowed to the defendant to plead, answer, or demur, (not demurring alone,) has expired.

XXIII. That where no account, payment, conveyance, or other direct relief is sought against a party to a suit, it shall not be necessary for the plaintiff to require such party, not being an infant, to appear to and answer the bill. But the plaintiff shall be at liberty to serve such party, not being an infant, with a copy of the bill, whether the same be an original, or amended, or supplemental bill, omitting the interrogating part thereof: and such bill, as against such party, shall not pray a *subpoena* to appear and answer, but shall pray that such party, upon being served with a copy of the bill, may be bound by all the proceedings in the cause. But this order is not to prevent the plaintiff from requiring a party against whom no account, payment, conveyance, or other direct relief is sought, to appear to and answer the bill, or from prosecuting the suit against such party in the ordinary way, if he shall think fit.

XXIV. That where a plaintiff shall serve a defendant with a copy of the bill under the twenty-third order, he shall cause a memorandum of such service, and of the time when such service was made, to be entered in the Six Clerks' Office, first obtaining an order of the Court for leave to make such entry, which order shall be obtained upon motion without notice, upon the Court being satisfied of a copy of the bill having been so served, and of the time when the service was made.

XXV. That where a defendant shall have been served with a copy of the bill, under the twenty-third order, and a memorandum of such service shall have been duly entered, and such defendant shall not within the time limited by the practice of the Court for that pur-

pose, enter an appearance in common form or a special appearance under the twenty-seventh order; the plaintiff shall be at liberty to proceed in the cause, as if the party served with a copy of the bill were not a party thereto, and the party so served shall be bound by all the proceedings in the cause, in the same manner as if he had appeared to and answered the bill.

XXVI. That where a party shall be served with a copy of the bill under the twenty-third order, such party, if he desires the suit to be prosecuted against himself in the ordinary way shall be entitled to have it so prosecuted; and in that case he shall enter an appearance in the common form, and the suit shall then be prosecuted against him in the ordinary way. But the costs occasioned thereby shall be paid by the party so appearing, unless the Court shall otherwise direct.

XXVII. That where a party shall be served with a copy of the bill under the twenty-third order, and shall desire to be served with a notice of the proceedings in the cause, (but not otherwise to have the same prosecuted against himself,) he shall be at liberty to enter a special appearance under the following form; (that is to say,) "*A. B.* appears to the bill for the purpose of being served with notice of all proceedings therein." And thereupon, the party entering such appearance shall be entitled to be served with notice of all proceedings in the cause, and to appear thereon. But the costs occasioned thereby shall be paid by the party entering such appearance, unless the Court shall otherwise direct.

XXVIII. That a party shall not be at liberty to enter such special appearance under the twenty-seventh order, after the time limited by the practice of the Court for appearing to a bill in the ordinary course, without first obtaining an order of the Court for that purpose; such order to be obtained on notice to the plaintiff, and the party so entering such special appearance, shall be bound by all the proceedings in the cause, prior to such special appearance being so entered.

XXIX. That where no account, payment, conveyance, or other relief is sought against a party, but the plaintiff shall require such party to appear to and answer the bill, the costs occasioned by the plaintiff having required such party so to appear and answer the bill, and the costs of all proceedings consequential thereon, shall be paid by the plaintiff, unless the Court shall otherwise direct.

XXX. That in all suits concerning real estate which is vested in trustees by devise, and such trustees are competent to sell and give discharges for the proceeds of the sale, and for the rents and profits of the estate, such trustees shall represent the persons beneficially interested in the estate or the proceeds, or the rents and profits, in the same manner and to the same extent, as the executors or administrators in suits concerning personal estate represent the persons beneficially interested in such personal estate; and in such cases it shall not be necessary to make the persons bene-

ficially interested in such real estate, or rents and profits, parties to the suit. But the Court may upon consideration of the matter on the hearing, if it shall so think fit, order such persons to be made parties.

XXXI. That in suits to execute the trusts of a will, it shall not be necessary to make the heir at law a party; but the plaintiff shall be at liberty to make the heir at law a party where he desires to have the will established against him.

XXXII. That in all cases in which the plaintiff has a joint and several demand against several persons, either as principals or sureties, it shall not be necessary to bring before the Court, as parties to a suit concerning such demand, all the persons liable thereto; but the plaintiff may proceed against one or more of the persons severally liable.

XXXIII. That where a demurrer or plea to the whole bill shall be overruled, the plaintiff, if he does not require an answer, shall be at liberty immediately to file his note in manner directed by the twenty-first Order, and with the same effect, unless the Court shall, upon overruling such demurrer or plea, give time to the defendant to plead, answer, or demur; and in such case, if the defendant shall file no plea, answer, or demurrer, within the time so allowed by the Court, the plaintiff, if he does not require an answer, shall, on the expiration of such time, be at liberty to file such note.

XXXIV. That where the defendant shall file a demurrer to the whole bill, the demurrer shall be held sufficient, and the plaintiff be held to have submitted thereto, unless the plaintiff shall, within twelve days from the expiration of the time allowed to the defendant for filing such demurrer, cause the same to be set down for argument; and where the demurrer is to part of the bill, the demurrer shall be held sufficient, and the plaintiff be held to have submitted thereto, unless the plaintiff shall, within three weeks from the expiration of the time allowed for filing such last-mentioned demurrer, cause the same to be set down for argument.

XXXV. That where the defendant shall file a plea to the whole or part of a bill, the plea shall be held good to the same extent and for the same purposes as a plea allowed upon argument, unless the plaintiff shall, within three weeks from the expiration of the time allowed for filing such plea, cause the same to be set down for argument, and the plaintiff shall be held to have submitted thereto.

XXXVI. That no demurrer or plea shall be held bad and overruled upon argument, only because such demurrer or plea shall not cover so much of the bill as it might by law have extended to.

XXXVII. That no demurrer or plea shall be held bad and overruled upon argument, only because the answer of the defendant may extend to some part of the same matter as may be covered by such demurrer or plea.

XXXVIII. That a defendant shall be at liberty by answer to decline answering any interrogatory or part of an interrogatory, from

answering which he might have protected himself by demurrer; and that he shall be at liberty so to decline, notwithstanding he shall answer other parts of the bill from which he might have protected himself by demurrer.

XXXIX. That where the defendant shall, by his answer, suggest that the bill is defective for want of parties, the plaintiff shall be at liberty, within fourteen days after answer filed, to set down the cause for argument upon that objection only; and the purpose for which the same is so set down shall be notified by an entry, to be made in the registrar's book, in the form or to the effect following: (that is to say,) "Set down upon the defendant's objection for want of parties;" and that where the plaintiff shall not so set down his cause, but shall proceed therewith to a hearing, notwithstanding an objection for want of parties taken by the answer, he shall not, at the hearing of the cause, if the defendant's objection shall then be allowed, be entitled as of course, to an order for liberty to amend his bill by adding parties; but the Court, if it thinks fit, shall be at liberty to dismiss the bill.

XL. That if a defendant shall, at the hearing of a cause, object that a suit is defective for want of parties not having by plea or answer taken the objection, and therein specified by name or description the parties to whom the objection applies, the Court (if it shall think fit) shall be at liberty to make a decree saving the rights of the absent parties.

XLI. That where a defendant in equity files a cross bill against the plaintiff in equity for discovery only, the costs of such bill, and of the answer thereto, shall be in the discretion of the Court at the hearing of the original cause.

XLII. That where a defendant in equity files a cross bill for discovery only against the plaintiff in equity, the answer to such cross bill may be read and used by the party filing such cross bill, in the same manner, and under the same restrictions, as the answer to a bill praying relief may now be read and used.

XLIII. That in cases in which any exhibit may by the present practice of the Court be proved *visd voce* at the hearing of a cause, the same may be proved by the affidavit of the witness who would be competent to prove the same *visd voce* at the hearing.

XLIV. That where a defendant makes default at the hearing of a cause, the decree shall be absolute in the first instance, without giving the defendant a day to show cause, and such decree shall have the same force and effect as if the same had been a decree *nisi* in the first instance, and afterwards made absolute in default of cause shown by the defendant.

XLV. That every decree for an account of the personal estate of a testator or intestate shall contain a direction to the Master to inquire and state to the Court what parts (if any) of such personal estate are outstanding, or undisposed of, unless the Court shall otherwise direct.

XLVI. That a creditor, whose debt does not carry interest, who shall come in and establish the same before the Master, under a

decree or order in a suit, shall be entitled to interest upon his debt, at the rate of 4l. per cent. from the date of the decree, out of any assets which may remain after satisfying the costs of the suit, the debts established, and the interest of such debts as by law carry interest.

XLVII. That a creditor who has come in and established his debt before the Master under a decree or order in a suit, shall be entitled to the costs of so establishing his debt, and the same shall be taxed by the Master, and added to the debt.

XLVIII. That in the reports made by the Masters of the Court, no part of any state of facts, charge, affidavit, deposition, examination, or answer, brought in or used before them, shall be stated or recited. But such state of facts, charge, affidavit, deposition, examination or answer, shall be identified, specified, and referred to, so as to inform the Court what state of facts, charge, affidavit, deposition, examination, or answer, were so brought in or used.

XLIX. That it shall not be necessary in any bill of revivor, or supplemental bill, to set forth any of the statements in the pleadings in the original suit, unless the special circumstances of the case may require it.

L. That in any petition of rehearing of any decree or order made by any judge of the Court, it shall not be necessary to state the proceedings anterior to the decree or order appealed from, or sought to be reheard.

LI. That the foregoing Orders shall take effect as to all suits, whether now depending, or hereafter commenced, on the last day of Michaelmas Term, one thousand eight hundred and forty-one.

F. R. BEDWELL,
Registrar.

CHANGES IN THE LAW,

IN THE LAST SESSION OF PARLIAMENT.

No. XIX.

COURT OF CHANCERY,

4 & 5 Vict. c. 52.

An act to amend an act of the fourth year of her present Majesty, intituled an act for facilitating the Administration of Justice in the Court of Chancery.

[21st June, 1841.]

1. 3 & 4 Vict. c. 94. *Repeal of 3 & 4 Vict. c. 94, in part. Rules, &c. to be binding from the making thereof, unless objected to by the vote of either house of parliament, or are informal.*—Whereas by an act passed in the fourth year of the reign of her present Majesty, intituled "An Act for facilitating the Administration of Justice in the Court of Chancery," it was among other things enacted, that the Lord Chancellor with the advice and consent of the Master of the Rolls and the Vice Chancellor, or one of them, might and he was hereby required,

within five years from the passing of the same act, to make certain rules, orders, and regulations (with reference to the forms and mode of proceeding in the said Court of Chancery), and otherwise as therein mentioned, and that all such rules, orders, and regulations should be laid before both houses of parliament, if parliament should be then sitting, immediately upon the making and issuing the same, or if parliament should not be sitting then within five days after the next meeting thereof; and that no such rule, order, or regulation should have effect until each house of parliament should have actually sat thirty-six days after the same should have been laid before each house of parliament as aforesaid; and that every such rule, order, or regulation so made should from and after the time aforesaid be binding and obligatory on the said court, and be of like force and effect as if the provisions contained therein had been expressly enacted by parliament, unless the same should by vote of either house of parliament be objected to: And whereas no rule, order, or regulation hath yet been made under the said recited act: and whereas it is expedient to alter and amend the said recited act in manner herein-after mentioned: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, that so much of the said recited act as directs that no such rule, order, or regulation as aforesaid shall have effect until each house of parliament shall have actually sat thirty-six days after the same shall have been laid before each house of parliament as aforesaid, shall, from and after the passing of this act, be and the same is hereby repealed: and that every such rule, order, or regulation made in pursuance of the said recited act shall from and after the time in that behalf to be appointed by the Lord Chancellor, with such advice and consent as aforesaid, and if no time shall be so appointed then from and after the making thereof, be binding and obligatory on the said court, and be of like force and effect as if the provisions therein contained had been expressly enacted by parliament: Provided always, that if either of the houses of parliament shall, by any resolution passed at any time before such house of parliament shall have actually sat thirty-six days after such rules, orders, and regulations shall have been laid before such house of parliament, resolve that the whole or any part of such rules, orders, or regulations ought not to continue in force, in such case the whole or such part thereof as shall be so included in such resolution, shall from and after such resolution cease to be binding and obligatory on the said court: Provided also, that no such rule, order, or regulation as aforesaid shall by virtue of the said act be of the like force and effect as if the provisions therein contained had been expressly enacted by parliament, unless the same shall be expressed to be made in pursuance of the said act and of this act; and that every such

rule, order, or regulation so expressed to be made in pursuance of the said act and of this act, which shall not be laid before both houses of parliament within the time by the said recited act limited for that purpose, shall from and after the expiration of such time be absolutely void and of no effect.

2. *Interpretation clause.*—And be it enacted, that in the construction of this act the expression "Lord Chancellor" shall mean also and include the Lord Chancellor, Lord Keeper, and Lords Commissioners for the custody of the Great Seal of the United Kingdom for the time being.

CONSOLIDATION AND AMENDMENT OF THE LAW OF ATTORNEYS.

THE Master of the Rolls on Monday last introduced a bill into the House of Lords to consolidate and amend the law relating to attorneys and solicitors practising in England and Wales. When it is considered that there are no less than sixty statutes from the time of Henry III. to the present reign, the importance and necessity of this consolidation and amendment are apparent.

The two principal acts are the 2 Geo. 2, c. 23, and 22 Geo. 2, c. 46; but there are numerous provisions scattered through other statutes, and mixed up with various heterogeneous subjects, and the object appears to be to collect all that relates to the profession into one bill, properly digested and arranged, with such amendments as appear to be right and proper.

We are not able, for want of space, to give the whole of the bill in the present number, and shall, therefore, submit to our readers, an analysis of its provisions. We have added references to the previous enactments, so far as they have been adopted on the present occasion; and where such references are not made, the clauses are either wholly or partially new. In giving the bill in future numbers, we shall from time to time explain the reasons and objects of the new enactments.

The following is an

ANALYSIS OF THE BILL.

Repeal of former acts, or parts of acts, as stated in schedule.

No person to act as an attorney or solicitor, unless admitted and enrolled, 2 G. 2, c. 23, s. 1.

No person to be admitted an attorney or solicitor, unless he shall have served a clerkship of five years, 2 G. 2, c. 23, s. 5.

No attorney shall have more than two clerks at one time (2 G. 2, c. 23, s. 15), or be capable of taking a clerk, unless he shall have been in practice five years.

No attorney shall take or retain a clerk after

discontinuing business (22 G. 2, c. 46, s. 7), nor whilst clerk to another. Rule Trinity, 1791.

Persons bound for five years may serve one year with a barrister or special pleader, and one year with a London agent, 1 & 2 G. 4, c. 48, s. 2. Rule Trinity, 1791.

Any person who has taken a degree at Oxford, Cambridge, Dublin, Durham, or London, may act as an attorney or solicitor, upon having served a clerkship of three years (1 & 2 G. 4, c. 48, s. 4; 1 Vict. c. 56), one year of which may be served with the London agent.

Affidavits to be made within three months of execution of articles (22 G. 2, c. 46, s. 3). If affidavit not filed within three months, the service to reckon from day of filing affidavit.

Affidavit: to be produced on applying for admission, 22 G. 2, c. 46, s. 4.

Book for entering names, &c. of attorney and clerk, &c. 22 G. 2, c. 46, s. 6.

How clerks to be employed, 22 G. 2, c. 46, s. 8.

Clerks whose masters have died, may enter into fresh contracts for the residue of their term, 22 G. 2, c. 46, s. 9.

Clerks before admission to make affidavit of having served, 22 G. 2, c. 46, s. 10.

Persons on applying for admission as attorneys to be examined as to fitness and capacity, 2 G. 2, c. 23, s. 2.

The Judges to appoint examiners.

Courts of Equity to examine solicitors, 2 G. 2, c. 23, s. 4.

The Master of the Rolls may appoint examiners.

The Master of the Rolls may concur with the Judges in appointing examiners.

Attorneys and solicitors, before admission, to take oath, 2 G. 2, c. 23, ss. 1 & 13.

The names of attorneys and solicitors to be enrolled in alphabetical order.

Appointment of registrar of certificates.—Regulations of the Judges.

Attorneys and solicitors to apply for annual certificates.

Declaration to be signed by attorney, partner, or London agent.

Applications to be entered in a book; certificate of entry to be issued.

On registrar's refusal, application to be made to the Court or Judge.

In cases of neglect to take out a certificate, an application to be made to the Court or Judge.

Persons practising without certificate incapable of recovering fees.

Stamping certificates.

Persons duly admitted in one Court capable of practising in all other Courts on signing the other rolls, 1 Vict. c. 56, s. 4; 1 & 2 Vict. c. 45, s. 3.

Defects in the service, &c. of attorneys, not to disqualify persons who have served them, 5 & 6 W. 4, c. 11, s. 7.

Applications for striking attorneys off the roll for defect in articles, &c., to be made within twelve months of admission, 5 & 6 W. 4, c. 11, s. 8.

Proviso against fraud.

Fees for registering articles and examination and admission, and for entry and certificate (1 Vict. c. 56, s. 3), stated in schedule.

Increase or diminution of fees.

Appropriation of fees.

Attorneys not to commence or defend suits if prisoners, 12 G. 2, c. 13, s. 9.

Attorneys not to act as agents for persons not qualified, &c., 2 G. 2, c. 23, s. 17; 22 G. 2, c. 46, s. 11.

Attorneys, &c. incapacitated from becoming justices of the peace, 5 Geo. 2, c. 18, s. 2.

Proviso for places having justices by charter, 5 G. 2, c. 18, s. 4.

Prohibiting persons not enrolled, from suing out writs, &c., 2 G. 2, c. 23, s. 24.

Prohibiting persons unqualified, from acting in county courts, 12 G. 2, c. 13, s. 7.

Attorneys and solicitors not to commence an action for fees till one month after the delivery of their bills, 2 G. 2, c. 23, s. 23. Reference of bills to be taxed.

After one month bills to be taxed subject to conditions.

Certificate of taxation to be final; judgment may be entered.

Allowance of set-off, notwithstanding lien of attorney.

Taxation of bills after payment.

Attorneys and solicitors enabled to take security for costs.

Persons whose periods of service has expired before the commencement of the act, but who have not been admitted, may, if otherwise qualified, be admitted under this act.

To what clerks, &c. and government solicitors the act not to extend, 2 G. 2, c. 23, s. 26.

Order may be made authorizing attorneys to administer oaths.

Meaning of certain words in this act.

Act may be altered.

SELECTIONS FROM CORRESPONDENCE.

POWER OF ASSIGNEES.

To the Editor of the Legal Observer.

THE 22d s. of 1 & 2 W. 4, c. 56, directs that "the proceeds of sale of all the estate and effects, real and personal, of the bankrupt, shall in every case be possessed and received by such *official assignee alone*." How then can a sufficient receipt for the purchase-money be given to the purchaser if the official assignee is not made a party to the conveyance, and gives a discharge for the purchase-money? In the case alluded to, (p. 202, *ante*), the creditors' assignees *alone* received the money, and *alone* gave the receipt, which the act says shall be done by the *official assignee alone*. The act requires the purchaser to pay his purchase-money to one particular person, and if he fails to do that, what will be the consequence to the purchaser but having to repay it if the creditors' assignees (persons wrongfully receiving it) misapply it? The proviso of the 22d s.

mentions that the official assignee is to act with the assignee chosen by the creditors, and the 26th sec. vests the real estate in the assignees for the time being by virtue of their appointment, and the 40th sec. states that "all the real and personal estate of the bankrupt shall immediately on such appointment vest in such official assignee jointly with the existing [creditors'] assignees, if any, in like manner, as if the proceedings in the said bankruptcy had originally been commenced by virtue of this act." I think, therefore, it is quite clear that the official assignee (although prohibited from interfering with the time and manner of effecting the sale of the bankrupt's estate and effects), is a necessary party to the conveyance of the property, and the only person capable of receiving and giving a receipt for the purchase-money and discharging the purchaser, and that the conveyance, without his concurrence, renders the title defective. R.

REPAIR OF PARSONAGE HOUSE.

For an answer to the question put by a correspondent at p. 336, as to whether a newly appointed incumbent can oblige the executors of his predecessor to make good any want of repairs in a dilapidated parsonage house, in the way of *papering* and *painting*, I beg to refer him to the case of *Wise* against *Metcalf*, 10 B. & C. 299, where Mr. Justice *Bayley*, in delivering the judgment of the Court, said, "Upon the whole we are of opinion the incumbent was bound to maintain the parsonage, and also the chancel, and to keep them in good and substantial repair, restoring and rebuilding, when necessary, according to the original form, without addition or modern improvement; and that he was not bound to supply or maintain anything in the nature of ornament to which *painting* (unless necessary to preserve exposed timbers from decay), and white washing and *papering* belong." W. E. S.

LOSS OF PROCEEDINGS IN BANKRUPTCY.

The proceedings under a *commission* of bankrupt having been destroyed by fire, and the bankrupt being anxious to obtain his certificate, I shall esteem it a favor if any of your readers can suggest any mode by which it may be effected. The only way in which it can be shewn what the amount of the debts proved were, is by the amount of the dividend which has been paid under the bankruptcy.

CIVIS A.

COSTS OF TRUSTEE, BEING A SOLICITOR.

Considering the startling decision that in a case where one member of a legal firm is a trustee or executor, and the business connected therewith has been transacted by the firm, yet they are only entitled to money out of pocket, it is important in every instrument under which a solicitor is to act the part of a trustee to declare that, being a solicitor, he shall be entitled to his professional charges.

L.

DELAYS IN CHANCERY.

Delays in Chancery have long been proverbial. Many cases, however, arise where they might be avoided, and much expence saved. I more especially allude to cases wherein a single point arises for the decision of the Court, and yet the Court in too many cases refuses to decide the point until there has been a reference to the Master to take accounts, which no party in the cause wishes to be taken in the Master's office, and the taking of which can lead to no possible result as regards the point to be decided. For instance, in a case wherein the only question was on a statement of facts admitted by all parties, whether a husband had reduced into possession a legacy left to his wife, who survived him—why could not such a simple question have been decided without taking the accounts, and a reference to the Master, the expense of which will be seriously felt by the parties interested. Surely some steps should be taken to remedy so crying an evil.

CIVIS A.

ATTORNEY'S CERTIFICATE DUTY.

It appears from a recent number of the Legal Observer, which I regularly receive, that the Stamp Act is about to undergo revision, and if so, the whole energies of the profession ought to be brought to bear upon this matter in preference to any other objectionable part of the act. The certificate duty ought to be the first thing for the attorneys to look to: other things the Legislature will look to, but it will overlook this duty, unless the profession make a determined push for its discontinuance. The Legal Observer, from its wide circulation, can do much to assist us in this matter.

AN ATTORNEY.

SUPERIOR COURTS.

Vice Chancellor's Court.

SEPARATE USE.—DIRECTION FOR MAINTENANCE.—PRACTICE.—COSTS.

Where property is bequeathed to a married woman, to her separate use for life, with a power of directing the trustees to apply any portion of the income for the maintenance and advancement of her children, a security executed by her upon the property, if at all available, will not prevent her from subsequently appointing a portion of the income in favor of the children; but such appointment must be made previous to the filing of the bill for carrying it into effect.

Quære whether the incumbrancer, or even a trustee who concurred in her executing the security, will be entitled to costs for appearing on a petition presented on behalf of the children, to have a portion of the income set apart for their benefit.

The plaintiffs in this case were the children of Mr. and Mrs. Dalmaine, and they had filed

a bill for the purpose of having certain funds, bequeathed to them after the death of their mother, brought into Court and secured for their benefit. These funds had, pursuant to an order obtained for the purpose, been paid into Court, and a petition had since been presented on their behalf, praying that the dividends from time to time to accrue due thereon, might be paid to their mother, she undertaking to apply a competent part thereof for their maintenance and support, or that it might be referred to the master to determine what would be fit and proper to be allowed for such purpose. The petition was opposed by several of the defendants, as incumbrancers and representatives of incumbrancers to whom Mrs. Dalmaine had assigned her interest; but assented to by Mrs. Dalmaine, who, by her counsel, offered to give any direction to the trustees that might be necessary for effectuating the wishes of the plaintiffs.

K. Bruce and Prendergast, for the plaintiffs, stated that the object of the present application was to obtain for the plaintiffs that benefit which was intended for them by the testator. Difficulties were attempted to be interposed by certain of the defendants who claimed in respect of alleged incumbrances committed by Mrs. Dalmaine: but it was extremely questionable, whether such incumbrances could be in any manner sustained, for the life-interest given to her was bequeathed for her separate use, without the power of anticipation, so that the only security she could give was upon the dividends as they accrued due, and the plaintiff's interests could not be affected by any such security. The will contained an express direction to the trustees after the decease of Mrs. Dalmaine, or in her lifetime, with her consent, to apply any part of the dividends and interest of the trust property for the maintenance and advancement of the plaintiffs. It was a positive trust, no discretion was vested in the trustees after a direction from the mother, and this she was willing to give.

Girdlestone and Hallett, for Mrs. Dalmaine, assented to the prayer of the petition, and offered to give any direction the court might think necessary.

Richards, Wakefield, Bethell, Roupell, G. Russell, Jemmett, and Stinton, for the several defendants claiming in respect of the incumbrances, submitted that there was nothing apparent upon any proceeding before the Court to warrant the making an order upon the petition. The bill merely prayed that the trusts of the testator's will might be carried into execution, and the clear residue of the testator's estate might be ascertained: that a receiver might, if necessary, be appointed, and for an injunction to restrain the trustees from parting with the trust funds; and the prayer of the petition was, that the dividends might be paid to Mrs. Dalmaine, she undertaking to maintain the plaintiffs in a suitable and proper manner. No attempt was made either by the bill or the petition, to impeach the defendant's securities, and the plaintiffs could not go beyond their record and seek to obtain by an inter-

locutory order, that which could not be obtained even at the hearing of the cause. At the time the bill was filed, the plaintiffs had no interest whatever, for their mother was entitled to the dividends for life, until she should make a direction in their favor, and no such direction was made previous to the filing of the bill. They cited *Nedby v. Nedby*, 4 Myl. & Cr. 367.

The Vice Chancellor said the question was, whether if a direction were necessary, and that were given subsequently to the filing of the bill, the fact ought not to be brought before the Court by supplemental bill.

K. Bruce in reply, submitted that the direction might be given at the Bar, and that had been done here by Mrs. Dalmaine appearing by her counsel, and giving it; but even if that were not sufficient, the utmost that could be required was a supplemental petition. The fund having been brought into Court, the Court might deal with it in the manner most consistent with the rights of the parties. The condition of the defendants was most oppressive.

The Vice Chancellor said the difficulty in making an order was in point of form. He certainly could not comprehend what right the incumbrancers had to the annual income; for unless there were a power, a married woman could pass nothing, and here there was an express clause against anticipation. Mrs. Dalmaine could, therefore, only give a right to the dividends as they became due, and his Honor said he could not see why the incumbrancers were made parties. Unfortunately, the bill had raised a question as to the incumbrancers having a right, because it stated that certain parties claimed, &c.; and the petitioner oddly stated that the mother was entitled, and prayed that the dividends might be paid to her. The Court could only make an order to the extent of any direction that might be given by Mr. Dalmaine, and no such direction appearing, the petition must stand over for the parties to take such proceeding as they might be advised for bringing the direction clearly before the Court. The costs should also stand over; for it was a question whether the incumbrancers had any interest, and whether they ought, therefore, to have appeared; and with regard to the trustee under the will, it was also a question whether he ought to have permitted his *cestui que trust* to throw a cloud over her life interest.

Dalmaine v. Dalmaine, July 17th, 1841.

Rolls.

CONSTRUCTION OF WILL.—RESIDUE.

Where the residuary estate of a testator is divided by him into several parts, and a legacy is given out of one of such parts, which afterwards becomes lapsed, such legacy does not sink either into the general residue, or the portion of residue from which it was given, but devolves upon the next of kin.

The bill in this case was filed by the children of Charles Lloyd, a deceased son of the testatrix in the pleadings named, for the purpose of

having the rights of the parties declared, and the funds to which the plaintiffs were entitled secured for their benefit.

The testatrix by her will, after giving certain specific legacies, directed that the residue of her property should be divided into three equal parts or shares, and, as to one equal part thereof, she gave and bequeathed the same to her son John Lloyd, absolutely; as to one other equal third part, to John Lloyd and Thomas Key, upon trust to pay to her son Charles Lloyd, 500*l.* within six months after her decease, and, as to the residue of the said share, to pay the interest and dividends thereof to her said son Charles for life, and, after his decease, to pay and divide the same unto and amongst the children of her said son Charles equally; and, as to the remaining one-third part or share, for her daughter and her children. Charles Lloyd died in the lifetime of the testatrix, and the questions were, whether his legacy lapsed into the general residue, or into the particular portion of residue given to his children, or whether it went to the testatrix's next of kin.

Pemberton and *K. Parker*, contended that it was quite competent for a testator to form as many residues as he chose, and it was evident that, in this case, the testatrix intended to give the family of each of her nephews and niece the full benefit of one-third of the general residue, and it could not be said that because she had carved one of these shares into different interests any one of these different interests should devolve upon strangers in the event of its not becoming vested in the immediate objects of the gift. The testatrix had created three distinct residues, and although it might be admitted that if the bequest of a portion of a general residue failed, it would go to the next of kin, still, if it were a legacy taken out of a separate residue, it would, in the event of a failure, sink into that from which it was taken.

Rogers, for the next of kin of the testator, insisted that the 500*l.* had lapsed for their benefit. The case was precisely similar to that of *Skrymsher v. Northcote*,^a where a legacy was given to the testator's daughter out of a moiety of residue given to his son, and which was afterwards revoked by his erasing his daughter's name, and it was held that the testator died intestate as to the revoked legacy, the Master of the Rolls observing that it was clear on the authorities that a part of the residue of which the disposition fails will not accrue in augmentation of the remaining parts, as a residue of residue; but, instead of resuming the nature of residue, devolved as undisposed of; that residue meant all of which no effectual disposition was made by the will, other than the residuary clause; but when the disposition of the residue itself failed, to the extent to which it failed the will was inoperative. So, here, the legacy having lapsed, was undisposed of, for there was no difference between a revoked and a lapsed legacy payable out of residue.

^a 1 Swanst. 566.

Pemberton, in reply, denied that the same rule was applicable to a revoked as to a lapsed legacy, for, with regard to the former, the testator shewed an intention of dealing with it, but the latter was left to sink into the *corpus* out of which it was taken. A testator might make as many special residues as he pleased, and lapsed portions of them could neither be transferred to the general residue nor to the next of kin.

Tennant, for several of the legatees, concurred with the case stated on behalf of the plaintiffs.

The Master of the Rolls said he would look into the case of *Skrymsher v. Northcote*, and give judgment on a future day.

July 22d.—His Lordship this morning delivered judgment, and after referring to the facts of the case, and the grounds of the judgment in *Skrymsher v. Northcote*, said that he could see no difference between that case and the present, and although the testatrix here might have made a different arrangement, had her attention been called to the subject, yet not having done so, his Lordship said he was bound by the authority of that case, and must direct the 500*l.* to be paid to the next of kin.

Lloyd v. Lloyd, July 20th and 22d, 1841.

Queen's Bench.

[Before the four Judges.]

CONVICTION.—EVIDENCE.

Justices who have drawn up an informal conviction, may, after it has been returned to the clerk of the peace, but before it has been appealed against, draw up and substitute for it a conviction of a more formal kind.

But where justices had returned an informal conviction, which, on being brought before one of the Judges of this Court, was quashed for defectiveness, and they then drew up a second; it was held that this second conviction, which was perfectly regular, could not be given in evidence by them in an action brought against them by the person convicted.

This was an action of trespass and false imprisonment. The plaintiff was a person who had acted as a pilot on the river Malden, and the defendants were magistrates of the county of Essex. An information had been laid against the plaintiff under the statute 6 Geo. 4, c. 125, s. 70,^a for acting as a pilot, not being

^a By which it is provided that "Every person assuming or continuing in the charge or conduct of any ship or vessel, without being a duly licensed pilot, or without being duly licensed to act as a pilot within the limits in which such ship or vessel shall actually be, or beyond the extent of his qualification, as expressed in his license, after any pilot duly licensed and qualified to act in the premises shall have offered to take charge of such ship or vessel, shall forfeit for every such offence a sum not exceeding 50*l.*, nor less than 20*l.*"

duly licensed, and the defendant had convicted him in the penalty of 20*l.*, imposed by the act, and in the event of non-payment of the same, had adjudged that he should be imprisoned for the space of six calendar months. The sessions, on appeal, confirmed the conviction. A *habeas corpus* was then applied for; and the case was, on the return to the *habeas*, argued before Mr. Justice *Patteson*, who decided that the conviction must be quashed, and the prisoner discharged. The convicting justice then drew up a second conviction, which was entered of record at the sessions. The plaintiff brought his action for false imprisonment, and the defendant sought to justify himself under the conviction. The cause was tried before Lord Chief Justice *Tindal*, at the summer assizes at Chelmsford, in 1839, when this second (which was a proper and formal conviction), was tendered in evidence, but was rejected by the learned judge. The case was then left by his lordship to the jury, and they returned a verdict for the plaintiff—damages, 60*l.*

Leave was reserved to enter a nonsuit; and a rule was afterwards obtained for that purpose, on the ground that the second conviction being a good conviction, the defendant was entitled to have it received in evidence, in justification of the imprisonment he had ordered.

In Hilary Term last, Mr. *Montagu Chambers* was heard to show cause against the rule; and Mr. *M. Smith* and Mr. *Borill* appeared in support of it.

The Court took time to consider the judgment, which was now delivered by

Lord *Denman*, C. J.—This was an action of trespass and false imprisonment, brought against the defendant, who acted as a justice of the peace for the county of Essex and borough of Maldon. The plea was Not guilty. The plaintiff had been taken before a magistrate, charged under the provisions of the 6 Geo. 4, c. 125, s. 70, with continuing to act as pilot on board a certain ship or vessel, he not being duly licensed as a pilot, after a person duly licensed as a pilot had offered to take charge of the same. The plaintiff was convicted on this information, and ordered to pay a penalty, or be imprisoned. He was brought up by *habeas corpus* before one of the judges, and discharged, on the ground that the conviction was bad, as it did not shew that the offer of the pilot was known to him at the time of the alleged offence. On the trial of the cause before Lord Chief Justice *Tindal*, at the summer assizes in 1839, the evidence shewed that there had been an original conviction, which had afterwards been taken away, and that a second conviction had been placed on record. The second conviction was tendered in evidence and rejected, and the plaintiff had a verdict, with leave to the defendant to move to enter a verdict for him, if the court should be of opinion that the second conviction, which Lord Chief Justice *Tindal* had rejected, ought to have been received in evidence. It is clear that the first conviction was

bad upon the face of it, for it did not shew that knowledge on the part of the person complained against which was necessary to make him guilty of the offence charged in the information. We agree with the opinion delivered by my brother *Patteson*, in his judgment in this case, when it was before him on the *habeas corpus*.^b The plaintiff here appears to have been convicted of having continued in charge of the vessel after the offer was made, from a proper pilot to go on board, though he is not shewn to have been in charge of it when the offer was made, nor to have known of that offer. It is therefore consistent with all that is alleged in the conviction, that the offer was made behind the back of the captain, and never came to his knowledge. Now we are of opinion that the facts stated ought to shew that the person convicted was really guilty of continuing in charge of the ship after the duly licensed pilot had formally offered to take charge of it, and that he knew of such offer. The allegations in the conviction do not go to that extent. We think, therefore, that the first conviction was defective in that respect; but we are of opinion that the second conviction, which supplied this defect, was good on the face of it, and if it could have been admitted in evidence, would have been an answer to the action. The only question on which the difficulty in the case arises, is whether the second conviction was admissible in evidence. It is clear that it rests with the Justices to substitute a good conviction for one that is bad in point of form. The *King v. Barker*,^c The *King v. Allen*,^d *Basten v. Carca*,^e and *Gray v. Cookson*,^f all shew that justices are not conclusively bound by the first form of the conviction, but when it is erroneous may alter it, provided that in the second instance the conviction as drawn up is warranted by the facts.^g *Seward v. Mount*^h was cited, to shew that it was not too late to amend the conviction. There the magistrates having convicted a party under the Highway Act, drew up a conviction, and returned it to the clerk of the peace, and on an action being brought against them, they put in the conviction returned to the clerk of the peace (which was open to some objections), and also another conviction, drawn up afterwards, in a more formal shape; and this latter conviction was held admissible, it being according to the truth and facts of the case. But that case is only a *nisi prius* decision, and is opposed to the opinion of Lord Chief Justice *Tindal* in the present case. On the facts of this case we think that the first conviction must be taken to have been returned to the clerk of the peace, and by him to have been filed of record in October, 1837. The counsel for the plaintiff say that the conviction must be taken to be of record when it is

^b The *Queen v. Chaney*, 6 Dowl. P. C. 281.

^c 1 East, 186.

^d 15 East, 333.

^e 5 Dowl. & Ry. 558.

^f 16 East, 13.

^g But see *Rogers v. Jones*, 5 Dowl. & Ry. 268.

^h 9 Carr. & Payne, 75.

first signed, and that having been once treated as a record, it cannot afterwards be altered. But admitting it to have been then of record, still we think the Justices may before appeal alter it, and return the one of the more formal kind. But it may be a question, whether this alteration can be made in any thing except a matter of mere formality. As a general rule, we think it is too late for justices to draw up a second conviction after the first has been quashed. We are therefore of opinion that the Lord Chief Justice was right in refusing to admit the second conviction in evidence, and the rule for the new trial must therefore be discharged:

Chaney v. Payne, T. T. 1841. Q. B. F. J.

Queen's Bench Practice Court.

APPOINTMENT OF OVERSEERS UNDER 54 G. 3, c. 91.—ADJOURNMENT OF PETTY SESSIONS.

The appointment of overseers at an adjourned petty sessions, the original sessions having been duly held under the 54 G. 3, c. 91, is good, although the adjournment day is beyond fourteen days from the 25th March mentioned therein.

R. V. Lee moved for a rule, calling upon the defendants, certain justices of the county of Stafford, to shew cause why a writ of *certiorari* should not be granted to bring up an order for the appointment of certain overseers for the township of Ovecot in that county. It appeared, that the necessary notices having been given on the 31st March, certain justices met together in petty sessions, for the purpose of appointing the officers for the township of Ovecot. Certain of the officers having been appointed, a question arose with regard to the eligibility of some persons who were proposed as overseers, and the magistrates adjourned the sessions to the 14th April. One of the magistrates conceiving that this adjournment was illegal, by reason of its being to a day more than fourteen days from the 25th March, within which time the appointment should be made under the 54 Geo. 3, c. 91, on the 1st April, appointed two overseers. On the 14th April, the adjourned petty sessions were held, and a new appointment was made; the object of the present application was to bring up the second appointment, with a view to its being quashed.

Cresswell and *Gordon* now shewed cause. The supposed invalidity of the second appointment arose from its having been made more than fourteen days after the 25th March: but the appointment having been made at a sessions duly held by adjournment, and the matter having been before the Court at the original sessions, that appointment was regular. The justices were possessed of the business, and their jurisdiction attached. Having adjourned it, it was not competent for any other justices to interfere to make any appointment. *Rex v. Sainsbury*, 4 T. R. 451, seemed to be decisive, for there it was held that where two sets of justices have a concurrent jurisdiction, and one of them appoints a meeting to grant ale-licences, their jurisdiction attaches, so as to

exclude the others appointing a subsequent meeting: but they may all meet together on the first day; but if after such appointment one set of magistrates meet on a subsequent day, and grant other licences, that proceeding is illegal, and the subject of an indictment.

R. V. Lee and *Whitmore*, in support of the rule. The appointment of the 1st April was rendered valid by its priority, and the fact of the lapse of more than fourteen days from the 25th March rendered the appointment of the 14th April invalid. In *Rex v. Sainsbury*, an actual decision had been pronounced by the magistrates before whom the matter came; but that was not the case here. The case of *Rex v. The Inhabitants of Great Marlow*, 2 East, 244, decided that after an appointment of overseers for a parish by the magistrates at one meeting they were *functi officio*; and no other magistrates could afterwards upon the claim of one of the persons so appointed to be exempt, appoint another in his place; but the party must appeal to the sessions, and get his discharge. *Rex v. The Overseers of Bridgewater*, 1 Cowper, 139, supported that view. The law was clearly laid down in 1 Nolan's Poor Laws, p. 55, ed. 4, to the same effect.

Coleridge, J.—One question in this case is, whether the appointment of the 14th April was a valid appointment. I think I am bound to decide that question first. It may be urged that the first appointment being made, the second is made out of time. I do not think that proposition can be sustained. Although the appointment is required to be made by the 54 G. 3, c. 91, within fourteen days after the 25th March, yet the general rule is, that where such a provision is introduced, unless there are negative words in the statute providing that the appointment shall not take place afterwards, such a provision is to be as directory. That was the construction put upon the 43 Eliz., and writs of *mandamus* having been issued requiring magistrates to make appointment of overseers, the issue of which writs must have proceeded on the ground that the words of the statute were directory. No negative words are introduced into this statute, and, therefore, its language must be regarded merely as directory. I cannot but think that if the magistrate had heedlessly and thoughtlessly allowed the time for appointing overseers, as limited by the act of parliament, and had proceeded to make the appointment on the 14th April, it would have been a perfect invalid appointment. The question, then, is whether the appointment of the 1st April is a valid one. Now, I do not think that the first appointment made, in point of time, is necessarily valid in point of law. The magistrates have met pursuant to notice. They make various appointments. They differ as to this and four or five others. By the consent of all present, and, among others, of Mr. Sneyd, the matter is adjourned until the 14th April. That being done, I think they had obtained possession of the subject-matter, and, therefore, had jurisdiction over him. Suppose that on the 31st March, they had adjourned to any day

within the fourteen days after the 25th March, would it have been competent for any two magistrates to go during that time and make another appointment of overseers? I think not. I think that is precisely the same when you get over the difficulty of the question as to the adjournment, whether the adjournment was within the fourteen days or not. Upon its being made known to Mr. Sneyd, that the adjournment for such a length of time might be irregular, the proper course for him to pursue would have been to inform his brother magistrates of the fact, and proceed or not with the appointment of overseers, in any way they thought proper; but without doing so, he goes to another place, and without the knowledge of his brother magistrates assists in making the appointment on the 1st April. He had no right to do that. As I hold the appointment on the 14th to have been valid, the appointment of the 1st April was irregular. I think, therefore, that the present rule ought to be discharged, but without costs.

Rule discharged without costs. — *Reg. v. Sneyd and another*, E. T. 1841. Q. B. P. C.

ATTACHMENT.—AFFIDAVIT BY WHOM MADE.

In supporting a rule for an attachment for the non-payment of money pursuant to an award, an affidavit from the plaintiff or prosecutor himself is not necessary; but the demand having been made by the attorney in pursuance of a letter of attorney, an affidavit made by him that the money is still due is sufficient.

In this case a rule had been obtained for an attachment for non-payment of a sum of money and costs, pursuant to an award. Cause was now shewn, and it was objected that the prosecutor had made no affidavit that the money was still due.

In support of the rule, it was contended that the affidavit of the attorney of the prosecutor, which was produced, was sufficient, the demand having been made by him by authority of a letter of attorney.

Wightman, J.—The affidavit produced is sufficient.

Peacock, in support of the rule; *M. Chambers, contra*.

Rule absolute. — *Regina v. Paget*, T. T. 1841. Q. B. P. C.

LAW BILLS IN PARLIAMENT.

House of Lords.

For facilitating the Administration of Justice.

The Lord Chancellor.

[The main object of this bill is the appointment of two additional Judges in Chancery, and abolishing the Equity Exchequer.]

For the amendment of the Bankrupt Law.

The Lord Chancellor.

[This bill is intended to effect the recommendations of the Commissioners in Bankruptcy, Lunacy, and Insolvency.]

For improving the Practice and extending the Jurisdiction of County Courts.

The Lord Chancellor.

For authorizing the Transfer of certain Proceedings in Chancery, Bankruptcy, and Lunacy, to the County Courts.

The Lord Chancellor.

For consolidating and amending the Laws relating to Attorneys and Solicitors.

The Master of the Rolls.

[See Analysis of this bill, p. 377, *ante*.]

For enabling Incumbents to grant Leases.

The Bishop of London.

For enabling Ecclesiastical Corporations to grant Leases.

The Bishop of London.

For the improvement of Boroughs.

Lord Normanby.

For regulating Buildings.

Lord Normanby.

For the improvement of Drainage.

Lord Normanby.

House of Commons.

For the better Administration of Justice in the House of Lords and the Privy Council.

Sir E. Sugden.

For a Committee to inquire into the operation of the Acts for suspending in certain Cases the Usury Laws.

Sir E. Sugden.

To amend the Law of Landlord and Tenant.

Mr. Sharman Crawford.

THE EDITOR'S LETTER BOX.

Some letters are unavoidably postponed in consequence of the New Chancery Orders. The same cause, with the addition of the Law of Attorneys' Bill, has rendered it necessary to postpone an act relating to the abolition of the Punishment of Death in certain cases. It has been printed, and our next number will close the series of last session.

We recommend J. B. E. to submit to the "copying" required of him during part of the day, and then to ask for other employment of a more improving kind. He can scarcely be justified in refusing *in toto*.

It has been the aim of the Proprietors of this Work to insert not only such articles as are of interest at the time of publication, but also such as they conceived would be of permanent utility to every member of the profession, and were therefore worthy of being preserved. They have frequently had occasion to reprint their earlier numbers, in order to accommodate those who were desirous of possessing the whole work, and they have now the pleasure to announce that every volume, and any particular number, may be had of their Publisher, or (by order) of all booksellers. An Index to the first Twenty Volumes was published in May last, making the work complete in all respects down to that period.

The Legal Observer.

SATURDAY, SEPTEMBER 11, 1841.

— "Quod magis ad nos
Pertinet, et nescire malum est, agitamus.

HORAT.

THE NEW EQUITY BILL.

THE bill for the appointment of two new Equity Judges has passed the House of Lords without any material amendment, and as we some time ago surmised, will probably pass into a law before Michaelmas Term. We know not what opposition it may meet with in the Commons, but as its general principles have been assented to in two preceding sessions, we should hardly think the opposition would be very formidable. The Ministers will desire to carry it through, as it will facilitate some legal arrangements which, it is understood, they are desirous of making, and we cannot suppose that the members of the late government, or even any of their supporters, will now turn round and object to that which they so willingly supported only three months ago. We conceive, therefore, that the bill will pass into a law without any difficulty. We need not reprint it, having given it on a former occasion, and there being no alteration of any importance. The only points discussed in Committee were one raised by Lord Brougham, who declared his opinion to remain unchanged, that only one Judge should be appointed, and he for life, which was not supported by any other lord (but for which there is undoubtedly more ground than there was at the introduction of the bill); and an amendment proposed by Lord Campbell, with the view of admitting Irish Barristers to be eligible for these Judgeships. This was adopted, and so far as it may tend to promote good feeling between the Bars of the two countries, it is well; still we cannot think that it would ever be acted on. While on this subject, we have to observe that Sir Edward Sugden has at last accepted the Irish Lord Chancellorship, which has certainly been offered him. The immediate effect of this is to enable Lord Campbell to receive a pension as an Irish ex-Chancellor which, however, if Sir Edward had accepted one of the new Equity Judgeships, he would have also received. We shall certainly be glad that the country should enjoy the services

of Sir Edward Sugden on the Bench. His acuteness, learning, and integrity, will render him a highly valuable Judge, and, among other good effects, will be, in our opinion, his removal from the legislature, where he obstructs, rather than assists, the course of good legislation.

We have all along supported the bill for establishing new Equity Judges. We think a case was made out for their appointment by the evidence before the House of Lords; but we must repeat that the alterations in Equity matters should not stop here—they must be accompanied by others. The New Orders bequeathed by Lord Cottenham may be looked on as a commencement of the good work; many of them will do much good; those dispensing with answers in many cases, are perhaps the most valuable. But it must not be lost sight of, that much more should be done. We have reason to think that the work commenced under Lord Cottenham may be carried on by the *same instruments* under Lord Lyndhurst, and we hope it may be so. We, at any rate, do not intend to lose sight of this subject.

Lord Cottenham has also introduced bills for the establishment of local courts, and the provincial administration of chancery, bankruptcy, and lunacy, and also a bill for the amendment of the bankruptcy law. The two first we have already printed; there are, however, some alterations which we shall take an early opportunity of pointing out. The bill for the amendment of the bankruptcy law is founded on the recommendations of the Bankruptcy Commissioners, whose report we gave in our twentieth volume.

The legal changes to which we alluded in our last number, have been completed. Lord Cottenham has resigned the Great Seal, and it has been delivered to Lord Lyndhurst. Sir F. Pollock is Attorney General, and Sir W. Follett, Solicitor General. We were glad to find, however, that our opinion as to the loss sustained by the retirement of Lord Cottenham, was shared by many of our contemporaries, without distinction of party.

ALTERATIONS MADE BY THE NEW CHANCERY ORDERS IN EQUITY PLEADING.

IN our last number we printed the New Orders in Chancery, and we wish now to shew the alteration which they will make in the present system of equity pleading.

The first great alteration is as to the length of answers. By the present practice a defendant is obliged, as a general rule, to answer the whole of a bill; by several of the new Orders this rule is materially modified. By Order 16 a defendant shall not be bound to answer any statement or charge in the bill, unless specially and particularly interrogated thereto; and a defendant shall not be bound to answer any interrogatory in the bill, except those interrogatories which such defendant is required to answer; and where a defendant shall answer any statement or charge in the bill to which he is not interrogated, only by stating his ignorance of the matter so stated or charged, such answer shall be deemed impertinent.

Order 17 provides for the numbering of the interrogatories in the bill, and to affix a note at the foot of the bill in the form following:—"The defendant, *A. B.*, is required to answer the interrogatories numbered 1, 2, 3, &c.," and the office copy of the bill taken by each defendant shall not contain any interrogatories except those which such defendant is so required to answer, unless such defendant shall require to be furnished with a copy of the whole bill. This note, by Order 18, is to be considered as part of the bill, and the addition of any such note to the bill shall be considered as an amendment of the bill.

Instead of the present formal commencement of the interrogating part, beginning "To the end therefore," the following words shall be used: "To the end, therefore, that the said defendants may, if they can show why your orator should not have the relief hereby prayed, and may, upon their several and respective corporal oaths, and according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to such of the several interrogatories hereinafter numbered and set forth as in the note hereunder written, they are respectively required to answer: that is to say,—

1. Whether, &c.
2. Whether, &c."

This is a considerable improvement, and will greatly lessen the expense now attending the answers and subsequent proceedings in a cause.

The above Orders will shorten answers, but in certain cases they will be dispensed with altogether. By Order 21, after the time allowed to a defendant to plead, answer, or demur, if the defendant shall have filed no plea, answer, or demurrer, the plaintiff may file a note at the Six Clerks' Office, as follows:—"The plaintiff intends to proceed with his cause as if the defendant had filed an answer, traversing the

case made by the bill, and the plaintiff had replied to such answer, and served a *subpoena* to rejoin," and a copy of such note shall be served on such defendant in the same manner as a *subpoena* to rejoin is now served, and after the filing of such note the defendant shall not be at liberty to plead, answer, or demur, without special leave. By Order 22, however, a plaintiff shall not be allowed to file a note under the 21st Order, until he has obtained an order of the Court for that purpose.

By Order 23, where no account, payment, conveyance, or other direct relief is sought against a party to a suit, it shall not be necessary for the plaintiff to require such party, not being an infant, to appear to and answer the bill. But the plaintiff may serve such party with a copy of the bill, omitting the interrogating part; and such bill may pray that such party may be bound by all the proceedings in the cause; and Orders 24 to 29 regulate the mode of proceeding and costs in such cases. This is an important change in the present practice of the Court, and will lessen the expense of a suit, to advance, as it appears to us, the true ends of justice.

The next great alteration, so far as pleading is concerned, is as to parties. By Order 30, in all suits concerning real estate which is vested in trustees by devise, where such trustees are competent to sell and give discharges for the proceeds of the sale, and for the rents and profits of the estate, such trustees shall represent the person beneficially interested in the estate, or the proceeds, or the rents and profits in the same manner, and to the same extent, as the executors or administrators in suits concerning personal estate, represent the persons beneficially interested in such personal estate; and in such cases it shall not be necessary to make the persons beneficially interested in such real estates or rents and profits parties to the suit. But the Court may, upon consideration of the matter on the hearing, order such persons to be made parties. This order gets rid of one great anomaly in the present law relating to parties.

By Order 31, in suits to execute the trusts of a will, the heir at law shall no longer be a necessary party.

By Order 32, in all cases in which the plaintiff has a joint and several demand against several persons, either as principals or sureties, all the persons liable to the demand shall not be necessary parties.

Orders 33 to 38 make various regulations as to pleas and demurrers.

Orders 39 and 40 prescribe the mode of proceedings when an objection is taken by the defendant to the bill for want of parties.

By Order 49, it shall not be necessary in any bill of revivor or supplemental bill, to set forth any of the statements in the pleadings in the original suit, unless the special circumstances of the case may require it.

These appear to be all of the New Orders that make alterations in the form of equity pleadings, although many others bear indirectly upon them.

CONSOLIDATION AND AMENDMENT OF THE LAW OF ATTORNEYS.

HAVING in our last number given a short summary of this important bill, we proceed now to state the clauses *verbatim*.

In the first place it will be convenient to select all the provisions which relate to the due qualification of attorneys and solicitors. They are as follow :

1. That from and after the passing of this act, the several acts and parts of acts set forth in the first schedule hereunto annexed, so far as the same relate to that part of the United Kingdom of Great Britain and Ireland, called England and Wales, shall be, and the same are hereby repealed, save only and except, so far as such acts or parts of acts or any of them, repeal the whole or any part of the same, or of any other act or acts, and also save and except so far as relates to any matters or things, done at any time before the passing of this act ; all which matters and things shall be and remain good, valid, and effectual to all intents and purposes whatsoever, as if this act had not passed ; and also save and except as to the recovery and application of any penalty for any offence which shall have been committed before the passing of this act.

2. That from and after the passing of this act no person shall act as an attorney or solicitor, or as such attorney or solicitor sue out any writ or process, or commence, carry on, solicit, or defend any action, suit, or other proceeding in the name of any other person, or in his own name in her Majesty's High Court of Chancery, or Courts of Queen's Bench, Common Pleas, or Exchequer, or Court of Equity in the Exchequer Chamber, or Court of the Duchy of Lancaster, or Court of the Duchy Chamber of Lancaster at Westminster, or in any of the Courts of the Counties Palatine of Lancaster and Durham, or in the Court of Bankruptcy, or in the Court for relief of Insolvent Debtors, or in any County Court of Civil or Criminal Jurisdiction, or in any other Court of Law or Equity, in that part of the United Kingdom of Great Britain and Ireland, called England and Wales, or act as an attorney or solicitor in any cause, matter, or suit, civil or criminal, to be heard, tried, or determined before any justice of assize of oyer and terminer, or gaol delivery, or at any general or quarter sessions of the peace for any county, riding, division, liberty, city, borough, or place, or before any justice or justices, or before any commissioners of her Majesty's revenue, unless such person shall have been, previously to the passing of this act, admitted and enrolled, and otherwise duly qualified to act as an attorney or solicitor, under or by virtue of the laws now in force, or unless such person shall, after the passing of this act, be admitted and enrolled, and otherwise duly qualified to act as an attorney or solicitor, pursuant to the directions and regulations of this act, and unless such person

shall continue to be so duly qualified and on the roll at the time of his acting in the capacity of an attorney or solicitor as aforesaid.

3. That from and after the passing of this act, no person shall be capable of being admitted and enrolled as an attorney or solicitor, except as hereinafter mentioned, unless such person shall have been bound by contract in writing to serve as clerk for and during the term of five years to a practising attorney or solicitor in England or Wales, and shall have duly served under such contract for and during the said term of five years, and also unless such person shall, after the expiration of the said term of five years, have been examined and sworn in the manner hereinafter directed,

4. That no attorney or solicitor shall have more than two clerks at one and the same time, who shall be bound by such contract in writing as aforesaid to serve him as clerks ; and that from and after the passing of this act, no attorney or solicitor shall be capable of taking a clerk to be bound by such contract as aforesaid, unless such attorney or solicitor shall have been admitted, and shall have practised as an attorney or solicitor for five years previously to the date and execution of such contract.

5. That no attorney or solicitor shall have or retain any clerk who shall be bound by contract in writing as aforesaid, after such attorney or solicitor shall have discontinued or left off practising as or carrying on the business of an attorney or solicitor, nor whilst such attorney or solicitor shall be retained or employed as a writer or clerk by any other attorney or solicitor ; and service by any clerk under articles to an attorney or solicitor for and during any part of the time that such attorney or solicitor shall be so employed as writer or clerk by any attorney or solicitor, shall not be deemed or accounted as good service under such articles.

6. That any person who now is or hereafter shall be bound by contract in writing to serve as a clerk to a practising attorney or solicitor for the term of five years, and who shall actually and *bond fide* be and continue as pupil with, and as such be employed by any practising barrister ; or any person *bond fide* practising as a certificated special pleader in England or Wales for any part of the said term not exceeding one whole year, and in addition thereto, or instead thereof, with the London agent of the attorney or solicitor to whom any such person shall be so bound by contract as aforesaid, for any part of the said term not exceeding one year, either by virtue of any stipulation in such contract, or with the permission of such attorney or solicitor, shall be capable of being examined and sworn and admitted and enrolled as an attorney or solicitor in the same manner as if he had served the whole of the said period of five years with the attorney or solicitor to whom he may be so bound.

7. That any person who shall have taken, or who shall take the degree of bachelor of arts within six years after his matriculation, or the

degree of bachelor of laws within eight years after his matriculation, either in the University of Oxford, or in the University of Cambridge, or in the University of Dublin, or in the University of Durham, or in the University of London, and who shall, within four years after the day whereon he shall have taken or shall take such degree, be bound by contract in writing to serve as a clerk for and during the term of three years to a practising attorney or solicitor in England or Wales, and shall have continued in such service for and during the said term of three years, and shall, during the whole of such term, have been actually employed by such attorney or solicitor, or by the London agent of such attorney or solicitor, with his consent for any part of the said term not exceeding one year, in the proper business, practice, or employment of an attorney or solicitor, and who shall, after the expiration of the said term of three years have been examined and sworn in the manner hereinafter directed, shall be capable of being admitted and enrolled as an attorney or solicitor, although he shall have served a clerkship under such contract as aforesaid, for and during the term of three years only.

8. That whenever any person shall, after the passing of this act, be bound by contract in writing, to serve as a clerk to any attorney or solicitor as aforesaid, the attorney or solicitor to whom such person shall be so bound as aforesaid, shall within three months after the date of every such contract make and duly swear, or cause or procure to be made and duly sworn, an affidavit or affidavits of such attorney or solicitor having been duly admitted, and having practised for five years then last past, and also of the actual execution of every such contract by him the said attorney or solicitor, and by the person so to be bound, to serve him as a clerk as aforesaid; and in every such affidavit shall be specified the names of every such attorney or solicitor, and of every such person so bound, and their places of abode respectively, together with the day on which such contract was actually executed; and every such affidavit shall be filed within three months next after the execution of the said contract, with and by the officer appointed or to be appointed for that purpose, as hereinafter mentioned, who shall thereupon make and sign a memorandum of the day of filing such affidavit upon such affidavit, and also upon the said contract.

9. That in case such affidavit be not filed within such three months, the same may be filed by the said officer after the expiration thereof, but the service of such clerk shall be reckoned to commence and be computed from the day of filing such affidavit.

10. That no person who shall, from and after the passing of this act, become bound as aforesaid, shall be admitted an attorney or solicitor before such affidavit so marked as aforesaid shall have been produced and read before the Court or Judge to whom such person shall apply to be admitted an attorney or solicitor, in pursuance of the provisions hereinafter contained, unless such Court or Judge shall be satisfied that the

same cannot be produced, and shall think fit to dispense with the production thereof.

11. That the officer so appointed or to be appointed for filing such affidavits as aforesaid, shall keep a book wherein shall be entered the substance of every affidavit which shall be so filed as aforesaid, specifying the name and place of abode of the attorney or solicitor, to whom any person shall be bound to serve as a clerk, and of the clerk or person who shall be so bound as aforesaid, and of the person making such affidavit, with the date of the articles or contract in such affidavit mentioned or referred to, and the days of swearing and filing every such affidavit respectively; and such officer shall be at liberty to take, at the time of filing every such affidavit, the sum mentioned in the second schedule to this act annexed, and no more, as a recompence for his trouble in filing such affidavits, and preparing and keeping such books as aforesaid; and such books shall and may be searched in office hours, by any person whomsoever, without fee or reward.

12. That every person who now is or hereafter shall be bound by contract in writing to serve as a clerk to any attorney or solicitor, shall, during the whole time and term of service, to be specified in such contract, continue and be actually employed by such attorney or solicitor in the proper business, practice, or employment of an attorney or solicitor, save only and except in the cases hereinbefore mentioned.

13. That if any attorney or solicitor, to or with whom any such person shall be so bound, shall happen to die before the expiration of the term for which such person shall be so bound, or shall discontinue or leave off practice as an attorney or solicitor, or if such contract shall by mutual consent of the parties be cancelled, or in case such clerk shall be legally discharged before the expiration of such term, by any rule or order of the Court wherein such attorney or solicitor shall have been admitted, and such clerk shall and may in any of the said cases be bound by another contract or other contracts in writing, to serve as clerk to any other practising attorney or solicitor, or attorneys or solicitors, during the residue of the said term and service under such second or other contract in manner hereinbefore mentioned, shall be deemed and taken to be good and effectual, provided that an affidavit be duly made and filed of the execution of such second or other contract or contracts, within the time and in the manner hereinbefore directed, and subject to the like regulations with respect to the original contract and affidavit of the execution thereof.

14. That every person who shall have been or shall be bound as a clerk as aforesaid, shall before he be admitted an attorney and solicitor according to this act, prove by an affidavit of himself or of the attorney or solicitor to whom he was bound as aforesaid, to be duly made and filed with the proper officer hereinbefore mentioned, that he hath actually and really served and been employed by such practising attorney or solicitor, to whom he was bound as aforesaid during the whole time and in the manner re-

quired by the provisions of this act, and in the form to be approved by the Judges of the Court wherein such person shall apply to be admitted.

15. That it shall be lawful for the judges of the said Courts of Queen's Bench, Common Pleas, and Exchequer, or any one or more of them, and he and they is and are hereby authorized and required before he or they shall issue a fiat for the admission of any person to be an attorney, to examine and enquire, by such ways and means as he or they shall think proper, touching the fitness and capacity of such person to act as an attorney; and if the Judge or Judges as aforesaid shall be satisfied by such examination, or by the certificate of such examiners as hereinafter mentioned, that such person is duly qualified and fit and competent to act as an attorney, then, and not otherwise, the said Judge or Judges shall, and he and they is and are hereby authorized and required to administer or cause to be administered to such person the oath hereinafter directed to be taken by attorneys and solicitors, in addition to the oath of allegiance, and after such oaths taken to cause him to be admitted an attorney of such Court, and his name to be enrolled as an attorney of such Court, which admission shall be written on parchment, and signed by such Judge or Judges respectively, and shall be stamped with the stamps by law required to be impressed on the admission of attorneys.

16. And for the purpose of facilitating the enquiry touching the fitness and capacity of any person to act as an attorney: Be it enacted, that it shall be lawful for the Judges of the Courts of Queen's Bench, Common Pleas, and Exchequer, (or any eight or more of them, of whom the chiefs of the said Courts shall be three) from time to time to nominate and appoint such persons to be examiners for the purposes aforesaid, and to make such rules and regulations for conducting such examination as such Judges shall think proper.

17. That it shall be lawful for the Master of the Rolls, and he is hereby authorized and required before he shall admit any person to be a solicitor, to examine and enquire by such ways and means as he shall think proper touching the fitness and capacity of such person to act as a solicitor, and for that purpose from time to time to appoint such persons as examiners, and to make such orders and regulations for conducting such examination as he shall think proper. And if the Master of the Rolls shall by such examination or by the certificate of such examiners, be satisfied that such person is duly qualified to be admitted to act as a solicitor, then and not otherwise, the Master of the Rolls shall, and he is hereby authorized to administer or cause to be administered to such person the oath hereinafter directed to be taken by attorneys and solicitors in addition to the oath of allegiance, and after such oaths taken, to cause him to be admitted a solicitor in the Court of Chancery, and his name to be enrolled as a solicitor in such Court, which admission shall be written on parchment and signed by the Master of the Rolls, and

shall be stamped with the stamps by law required to be impressed on the admission of solicitors.

18. That it shall be lawful for the Master of the Rolls jointly with the Judges of the Courts of Queen's Bench, Common Pleas, and Exchequer, or with any eight or more of them (of whom the chiefs of the said Courts shall be three) if they shall see fit so to do, to nominate and appoint such examiners as aforesaid, and to make such rules and regulations as aforesaid for conducting such examinations.

19. That every person who shall, pursuant to this act, apply to be admitted an attorney or solicitor, shall before he be admitted and enrolled as aforesaid, take and subscribe the oath (or if he be one of the people called Quakers, the affirmation) following.

"I, *A. B.*, do swear (or solemnly affirm, as the case may be) that I will truly and honestly demean myself in the practice of an attorney or solicitor (as the case may be) according to the best of my knowledge and ability." "So help me God."

The next set of Clauses relate to the keeping an *Alphabetical Roll* of all Attorneys and Solicitors, and the issuing of *Annual Certificates*.

20. That from and after the passing of this act, the masters of the several Courts of Law at Westminster, or such person or persons as the Lord Chief Justice of the Court of Queen's Bench, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron of the Exchequer shall for that purpose severally and respectively appoint, shall be deemed and taken to be the proper officers for filing such affidavits as aforesaid in the said respective Courts, and they shall have the custody and care of the rolls or books wherein persons are at present enrolled as attorneys in the said respective Courts, and shall, and they are hereby respectively required from time to time, without fee or reward, (other than such sum or sums as are mentioned in the second schedule hereunto annexed,) to enrol the name of every person who shall be admitted an attorney in the said respective Courts, pursuant to the directions in this act, and the time when admitted in an alphabetical order in rolls or books, to be provided and kept for that purpose in their several and respective Courts. And also that the Queen's Remembrancer in the Court of Exchequer, or his deputy, and the chief clerk of the Court of the Duchy Chamber of Lancaster at Westminster, or his deputy, and the Prothonotaries of the Courts of the Counties Palatine of Lancaster and Durham, or their deputies, or such person or persons as the Lord Chief Justice of the Court of Queen's Bench, the Lord Chief Justice of the Court of Common Pleas, and the Lord Chief Baron of the Court of Exchequer shall jointly appoint, shall have the custody and care of the rolls or books wherein persons are at present enrolled as attorneys and solicitors in the said last mentioned respective Courts, and also, that the senior clerk of the Petty Bag

Office in the Court of Chancery, or his deputy, the chief clerk of the Duchy Chamber of Lancaster at Westminster, or his deputy, the registrars of the respective Courts of Equity in the Counties Palatine of Lancaster and Durham, or such other person or persons as the Master of the Rolls shall for that purpose appoint, shall have the custody and care of the rolls or books wherein persons are at present enrolled as solicitors, and which said clerk of the Petty Bag Office, or such other person or persons as shall be appointed as last mentioned, shall be deemed and taken as the proper officer or officers for filing such affidavits as hereinbefore mentioned in the Court of Chancery, and he and they is and are hereby also respectively required from time to time, without fee or reward other than as last aforesaid, to enrol the name of every person who shall be admitted a solicitor pursuant to the directions in this act, and the time when admitted, in alphabetical order, in rolls or books to be kept for that purpose, to which rolls or books in the said Courts of Law or Equity respectively, all persons shall and may have free access without fee or reward.

21. That it shall be lawful to and for the Lord Chief Justice of her Majesty's Court of Queen's Bench, the Master of the Rolls, the Lord Chief Justice of the Court of Common Pleas, and the Lord Chief Baron of the Court of Exchequer (or any three of them, of whom the Master of the Rolls shall be one), from time to time, by any order under their hands, to nominate and appoint a fit and proper person to keep an alphabetical roll or book, or rolls or books of all attorneys and solicitors, and to issue certificates of persons who have been admitted as attorneys or solicitors, and entitled to practise as such, who shall be called the registrar of certificates, and to make such orders, directions, and regulations touching the performance and execution of his duties as they shall think proper, which said registrar shall hold such office or employment during pleasure only, and such registrar shall have free access to, and shall be at liberty from time to time to examine and take copies or extracts, without fee or reward, of all rolls or books kept for the enrolment of attorneys and solicitors in any of the Courts at Westminster, and for the enrolment of attorneys or solicitors in the Court of the Duchy of Lancaster or Court of the Duchy Chamber of Lancaster at Westminster, or in any of the Courts of the Counties Palatine of Lancaster and Durham.

22. That no attorney or solicitor shall practise in any superior Court of Law or Equity in England or Wales, or otherwise act as an attorney or solicitor, until he shall have taken out such certificate or certificates as hereinafter mentioned, and during such time only as the same shall continue and be in force. And every attorney or solicitor, in every year, in which he may be desirous of practising as such, shall, between the 15th day of November and the 16th day of December in that year, deliver and leave with the registrar of certificates, days at the least before the granting and

issuing of the same, a declaration in writing signed by such attorney or solicitor, or by his partner, or in case such attorney or solicitor shall reside more than twenty miles from London, then by his London agent on his behalf, containing his name and place of residence; and the Court, or one of the Courts of which he is then admitted an attorney or solicitor, together with the term and year in or as of which he was so admitted; and the registrar of certificates shall cause all the particulars contained in such declaration to be entered in a proper book, to be kept for that purpose, which shall be open to the inspection and examination of all persons, without fee or reward.

23. That within six days after the delivery of such declaration so signed as aforesaid, the registrar of certificates (unless he shall see cause and have reason to believe that the party applying for such certificate is not upon the said roll of attorneys or solicitors, or is otherwise not qualified to act as an attorney or solicitor), shall deliver to the attorney or solicitor desirous of obtaining such certificate, or to his agent, a certificate signed by such registrar or officer, of such attorney or solicitor being duly enrolled; and such certificate shall be dated on the 15th day of November in the same year, and shall continue in force until the 16th day of December, in the year next following.

24. That in case the registrar of certificates shall decline to issue such certificate as aforesaid, the party so applying for such certificate, if an attorney, shall and may apply to any of the said Courts of Law at Westminster, or to any Judge thereof; or if a solicitor, to the Master of the Rolls, who are hereby authorized to make such order in the matter as shall be just, and to order payment of costs by and to either of the parties, if they shall see fit.

25. That if any attorney or solicitor shall neglect to take out any annual certificate within the time hereinbefore appointed for that purpose, then and in such case the registrar of certificates shall not grant a certificate to such attorney or solicitor without the order of the Master of the Rolls, in the case of a solicitor, or of one of the Courts of Queen's Bench, Common Pleas, or Exchequer, or of one of the Judges thereof, in the case of an attorney, authorizing such registrar to issue such certificate, and it shall be lawful for the Master of the Rolls, or for such Court or Judge to make such order upon such terms and conditions as he or they shall think fit; and every such last mentioned certificate shall bear date the day on which the same shall be granted, and shall continue in force until the 16th day of December then next following.

26. That no person who, as an attorney or solicitor, shall sue, prosecute, defend, or carry on any action or suit, or any proceedings in any of the Courts aforesaid, without having previously obtained a certificate, which shall be then in force, shall be capable of maintaining any action or suit at law or in equity for the recovery of any fee, reward, or disbursement for or in respect of any business, matter,

or thing done by him as an attorney or solicitor as aforesaid, whilst he shall have been without such certificate as aforesaid.

27. That the certificate hereinbefore directed to be signed and given by the registrar or registrars of certificates shall be the certificates upon which shall be impressed any stamp duties which now are or shall be hereafter required by law to be paid by attorneys and solicitors, and the same certificate so stamped shall be as good and effectual as if the same had been issued and entered in the manner directed by any act or acts made and now in force touching such certificates.

28. That every person who shall have been duly admitted an attorney or solicitor of any one of the Superior Courts of Law or Equity at Westminster as aforesaid, shall be entitled, upon the production of his admission therein, to be admitted as an attorney or solicitor in any other of the said Courts, or in any inferior Court of Law or Equity in England or Wales, upon having signed the roll of such other Court, but not otherwise, and shall thereupon be entitled to practise as an attorney or solicitor therein in like manner as if he had been sworn in and admitted an attorney or solicitor of such Court, provided that no additional fee, besides those payable by virtue of this act, shall be demanded or paid.

29. That no person who shall have duly served his clerkship under articles in writing pursuant to the provisions of this act, shall be prevented or disqualified from being admitted and enrolled as an attorney or solicitor, nor liable to be struck off the roll, if admitted, by reason or in consequence of the attorney or solicitor to whom he may have been bound by such articles, having been, after such service, struck off the roll, provided that such clerk or person be otherwise entitled to be admitted and enrolled according to the provisions hereinbefore contained.

30. That no person who has been admitted and enrolled shall be liable to be struck off the roll, for or on account of any defect in the articles of clerkship, or in the registry thereof, or in his service under such articles, or in his admission and enrolment, unless the application for striking him off the roll be made within twelve months from the time of his admission and enrolment, provided that such articles, registration, service, admission, or enrolment be without fraud.

31. That until the same shall be varied or altered, pursuant to the provisions hereinafter contained, the several sums of money mentioned in the second schedule hereunder written, shall and may be taken and received for the services and purposes mentioned and specified therein; provided always, that it shall be lawful to and for the Lord Chief Justice of her Majesty's Court of Queen's Bench, the Master of the Rolls, the Lord Chief Justice of the Court of Common Pleas, and the Lord Chief Baron of the Court of Exchequer (or any three of them, of whom the Master of the Rolls shall be one) from time to time to diminish or increase the said sums, or any of them,

as they shall see fit, so that by such diminution they be not reduced to less than one half, or by such increase be not made to exceed by more than one half the amount mentioned in the said schedule, and to make any order or orders for the payment and appropriation of the same sums to such persons, and in such manner as they shall think proper, and no greater or other fees, rewards, or sums than hereinbefore mentioned or referred to, shall be taken or received on any pretence whatsoever.

[We shall give another branch of this Bill in our next number.]

CHANGES IN THE LAW,

IN THE LAST SESSION OF PARLIAMENT.

No. XX.

PUNISHMENT OF DEATH.

4 & 5 Vict. c. 56.

An Act for taking away the Punishment of Death in certain cases, and substituting other Punishments in lieu thereof.

[22d June, 1841.]

1. 15 G. 2, c. 13, s. 12. *Embezzlement by servant of the Bank of England of any note, bill, dividend warrant, bond, deed, &c., of the company.* 35 G. 3, c. 66, s. 6. *Embezzlement by servant of Bank of England of any note, bill, dividend warrant, &c., relating to Irish annuities transferred to Bank of England.* 37 G. 3, c. 46, s. 6. *Embezzlement by any servant of Bank of England of any note, bill, &c., relating to certain other annuities transferred to Bank of England.* 24 G. 2, c. 11, s. 3. *Embezzlement by servant of South Sea Company of notes, bills, &c., of company.* 55 G. 3, c. 184, s. 7. *Stamp duties on deeds.* 55 G. 3, c. 185, s. 7. *Stamp duties on gold and silver plate.* 6 G. 4, c. 85, s. 18. *Returning from transportation. Certain offences of forgery and embezzlement not to be punishable with death. Punishment.*—Whereas it is expedient to alter and amend various statutes now in force in that part of the United Kingdom called England relative to certain offences by the said statutes now punishable with death:

And whereas by an act passed in the 15th year of the reign of his late Majesty king George the Second, intituled "An act for establishing an agreement with the Governor and Company of the Bank of England for advancing the sum of one million six hundred thousand pounds towards the supply for the service of the year one thousand seven hundred and forty-two," it was among other things enacted, that if any officer or servant of the said company, being intrusted with any note, bill, dividend warrant, bond, deed, or any security, money, or other effects belonging to the said company, or having any bill, dividend warrant, bond, deed, or any security or effects of any other person or persons lodged or deposited with the said company, or with him as an officer

or servant of the said company, should secrete, "embezil," or run away with any such note, bill, dividend warrant, bond, deed, security, money, or effects, or any of them, every officer or servant so offending, and being thereof convicted in due form of law, should be deemed guilty of felony, and should suffer death as a felon, without benefit of clergy :

And whereas also by an act passed in the 35th year of the reign of his late Majesty King George the Third, intituled "An act for making part of certain principal sums or stock and annuities, raised or created or to be raised or created by the parliament of the kingdom of Ireland on loans for the use of the government of that kingdom transferrable, and the dividends on such stock and annuities payable at the Bank of England, and for the better security of the proprietors of such stock and annuities, and of the Governor and Company of the Bank of England," it was among other things enacted, that if any officer or servant of the said Governor and Company of the Bank of England, being intrusted with any note, bill, dividend warrant, or warrant for payment of any annuity or interest or money, or any security, money, or other effects, of or belonging to the said Governor and Company, or having any note, bill, dividend warrant, or warrant for payment of any annuity or interest or money, or any security, money, or other effects, of any other person or persons, body politic or corporate, lodged or deposited with the said governor and company, or with him as an officer or servant of the said governor and company, in pursuance of this act, or of the due execution thereof, should secrete, embezzle, or run away with any such note, bill, dividend, or other warrant, security, money, or other effects as aforesaid, or any part thereof, every such officer or servant so offending should be deemed guilty of felony, and should suffer death as a felon, without benefit of clergy ;

And whereas also by an act passed in the 37th year of the reign of his late Majesty King George the Third, intituled "an act for making certain annuities created by the parliament of the kingdom of Ireland transferrable, and the dividends then payable at the Bank of England, and for the better security of the proprietors of such annuities and of the Governor and Company of the Bank of England," it was among other things enacted, that if any officer or servant of the said Governor and Company of the Bank of England, being intrusted with any note, bill, dividend warrant, or warrant for payment of any annuity or interest or money, or any security, money, or other effects, of or belonging to the said governor and company, or having any note, bill, dividend warrant, or warrant for payment of any annuity or interest or money, or any security, money, or other effects, of any other person or persons, body politic or corporate, lodged or deposited with the said governor and company, or with him as an officer or servant of the said governor and company, in pursuance of this act, or of the due execution thereof, should secrete, embezzle, or run away with any such note, bill,

dividend, or other warrant, security, money, or other effects, as aforesaid, or any part thereof, every such officer or servant so offending should be deemed guilty of felony, and should suffer death as a felon without benefit of clergy :

And whereas also by an act passed in the 24th year of his late majesty King George the Second, intituled, "An Act for reducing the Interest upon the Capital Stock of the South Sea Company from the time and upon the terms therein mentioned, and for preventing of frauds committed by the officers and servants of the said Company," it was, among other things, enacted, that if any officer or servant of the said company, being intrusted with any note, bill, dividend warrant, bond, deed, or any security, money, or other effects belonging to the said company, or having any bill, dividend warrant, bond, deed, or any security, money, or effects of any other person or persons lodged or deposited with the said company, or with him as an officer or servant of the said company, should secrete, "embezil," or run away with any such note, bill, dividend warrant, bond, deed, security, money, or effects, or any part of them, every officer or servant so offending, and being thereof convicted in due form of law, should be deemed guilty of felony, and should suffer death as a felon, without benefit of clergy :

And whereas also by an act passed in the 55th year of his late majesty King George the Third, intituled "An Act for repealing the Stamp Duties on deeds, law proceedings, and other written or printed instruments, and the duties on Fire Insurances, and on legacies, and successions and personal estates upon intestacies, now payable in Great Britain, and for granting other duties in lieu thereof," it was among other things enacted, that if any person should privately and secretly use any stamp or die which should have been provided, made, or used in pursuance of that act, or of any former act or acts relating to any stamp duty or duties, with intent to defraud his Majesty, his heirs or successors, of any of the said duties, or any part thereof, or if any person should fraudulently cut, tear, or get off, or cause or procure to be cut, torn, or got off, the impression of any stamp or die which should have been provided, made, or used, in pursuance of that or any former act, for expressing or denoting any duty or duties under the care and management of the commissioners of stamps, or any part of such duty or duties, from any vellum, parchment, or paper whatsoever, with intent to use the same for or upon any other vellum, parchment, or paper, or any instrument or writing, charged or chargeable with any of the duties thereby granted, then and in every such case every person so offending, and every person knowingly and wilfully aiding, abetting, or assisting any person or persons in committing any such offence as aforesaid, and being thereof lawfully convicted, should be adjudged guilty of felony, and should suffer death as a felon, without the benefit of clergy :

And whereas also by an act passed in the

55th year of the reign of his said late Majesty King George the Third, intituled "An Act for repealing the Stamp Office Duties on Advertisements, Newspapers, Gold and Silver Plate, Stage Coaches, and Licenses for keeping Stage Coaches, now payable in Great Britain, and for granting new duties in lieu thereof," it was among other things enacted, that if any person should transpose or remove, or cause to be transposed or removed, from one piece of gold or silver plate to another, or to any vessel or ware of base metal, any impression made with any mark, stamp, or die, which should have been proved, made, or used, in pursuance of that or any former act, for the purpose of marking or stamping of any such gold or silver plate as aforesaid, or if any person should sell, exchange, or expose to sale, or export out of Great Britain, any such gold or silver plate, or any vessel or ware of base metal, having thereupon any impression of any mark, stamp, or die which should have been transposed or removed from any other piece of plate as aforesaid, knowing the same respectively to be transposed or removed as aforesaid, or if any person should privately or secretly use any mark, stamp, or die so provided, made, or used as aforesaid, with intent to defraud his Majesty, his heirs or successors, then every person so offending, and every person knowingly and wilfully aiding, abetting, and assisting any person or persons in committing any such offence as aforesaid, and being thereof lawfully convicted, should be adjudged guilty of felony, and should suffer death as a felon, without benefit of clergy:

And whereas by an act passed in the 6th year of the reign of King George the Fourth, intituled "An Act for further regulating the payment of the Salaries and Pensions to the Judges of his Majesty's Courts in India, and the Bishop of Calcutta; for authorizing the Transportation of offenders from the island of Saint Helena; and for more effectually providing for the administration of justice in Singapore and Malacca, and certain colonies on the coast of Coromandel," it is among other things enacted, that if any offender sentenced or ordered by the Governor and Council of the island of Saint Helena to be transported from the said island to any such place as is therein mentioned or referred to should return to the said island of Saint Helena, or come into any of the territories or acquisitions of his Majesty, or of the united company of merchants of England trading to the East Indies in the East Indies, or shall come into any part of Great Britain or Ireland, before the end of the term for which he or she should be so sentenced or ordered to be transported as aforesaid, he or she so returning or coming as aforesaid should be liable to be punished as a person attainted of felony without benefit of clergy, and that execution should and might be awarded against such offender accordingly:

And it is expedient that the said several offences should no longer be punishable with death:

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present parliament assembled, that from and after the commencement of this act, if any person shall be convicted of any of the offences hereinbefore specified, such person shall not be subject to any sentence, judgment, or punishment of death; but shall, instead of the sentence or judgment in and by the said several acts hereinbefore recited ordered to be given or awarded against persons convicted of the said offences, or any of them respectively, be liable, at the discretion of the Court, to be transported beyond the seas for the term of the natural life of such person, or for any term not less than seven years, or to be imprisoned for any time not exceeding three years.

2. 7 & 8 G. 4, c. 30, s. 8. *Riotous demolition of churches, houses, &c., not to be punishable with death. Punishment.*—And whereas by an act passed in the eighth year of the reign of his late majesty King George the Fourth, intituled "An act for consolidating and amending the laws in England relative to malicious injuries to property," it was amongst other things enacted, that if any persons riotously and tumultuously assembled together to the disturbance of the public peace should unlawfully and with force demolish, pull down, or destroy, or begin to demolish, pull down, or destroy, any church or chapel, or any chapel for the religious worship of persons dissenting from the United Church of England and Ireland, duly registered or recorded, or any house, stable, coach-house, outhouse, warehouse, office, shop, mill, malthouse, hop-oast, barn, or granary, or any building or erection used in carrying on any trade or manufacture, or any branch thereof, or any machinery, where fixed or moveable, prepared for or employed in any manufacture or in any branch thereof, or any steam engine or other engine for sinking, draining, or working any mine, or any staith, building, or erection used in conducting the business of any mine, or any bridge, waggon-way, or trunk for conveying minerals from any mine, every such offender should be deemed guilty of felony, and being convicted thereof, should suffer death as a felon; and that in case of every felony punishable under that act every principal in the second degree, and every accessory before the fact, should be punishable with death or otherwise, in the same manner as the principal in the first degree was by that act punishable: And whereas it is expedient that the said last-mentioned offences should be no longer punishable with death; be it therefore enacted, that from and after the commencement of this act, if any person shall be convicted of any of the said offences hereinbefore last specified, whether as principal, or as principal in the second degree or as accessory before the fact, such person shall not be subject to any sentence, judgment, or punishment of death, but shall, instead of the sentence or judgment in and by the said act hereinbefore last recited ordered to

given or awarded against persons convicted of the said last mentioned offences, or any of them respectively, be liable, at the discretion of the Court, to be transported beyond the seas for any term not less than seven years, or to be imprisoned for any time not exceeding three years.

3. 9 G. 4, c. 31, ss. 16 and 17. *Rape, &c., not to be punishable with death.*—And whereas also by an act passed in the ninth year of the reign of his said late Majesty King George the Fourth, intituled “an act for consolidating and amending the statutes in England relative to offences against the person, it was amongst other things enacted, that every person convicted of the crime of rape should suffer death as a felon, and that if any person should unlawfully and carnally know and abuse any girl under the age of ten years, every such offender should be guilty of felony, and being convicted thereof should suffer death as a felon: and whereas it is expedient that the said several offences herein-before last specified should no longer be punishable with death; be it therefore enacted, that from and after the commencement of this act, if any person shall be convicted of any of the said offences herein-before last specified, such person shall not be subject to any sentence, judgment, or punishment of death, but shall, instead of the sentence or judgment in and by the said act herein-before last recited ordered to be given or awarded against persons convicted of the said last-mentioned offences, or any of them respectively, be liable to be transported beyond the seas for the term of his natural life.

4. *Imprisonment may be with or without hard labour.*—And be it enacted, that in awarding the punishment of imprisonment for any offence punishable under this act, it shall be lawful for the Court to direct such punishment to be with or without hard labour in the common gaol or house of correction, and also to direct that the offender shall be kept in solitary confinement for any portion or portions of such imprisonment, whether the same be with or without hard labour, not exceeding one month at any one time, and not exceeding three months in any one year, as to the Court in its discretion shall seem meet.

5. *Act not to alter 5 & 6 W. 4, c. 384, or 4 G. 4, c. 64.*—And be it enacted, that nothing in this act contained shall be construed to extend to the alteration or repeal of any of the powers, provisions, or regulations contained in an act passed in the fifth and sixth years of the reign of his late Majesty King William the Fourth, intituled “an act for effecting greater uniformity of practice in the government of the several prisons of England and Wales, and for appointing inspectors of prisons in Great Britain,” or in an act passed in the fourth year of his Majesty King George the Fourth, intituled “an act for consolidating and amending the laws relating to the building, repairing, and regulating of certain gaols and houses of correction in England and Wales.”

6. *Offences not to be tried at Sessions.*—

“And be it enacted, that none of the offences herein-before specified shall be tried or triable before any justices of the peace at any general or quarter sessions of the peace.

7. *Commencement of Act.*—And be it enacted, that this act shall commence and take effect on the first day of October one thousand eight hundred and forty-one.

THE PROPERTY LAWYER.

DAMAGES IN EQUITY.

It is now settled, although at one time it was not so clear, that a Court of Equity will not give relief by way of damages, but will leave the parties to their remedy in a Court of Law. *Denton v. Stewart*, 1 Cox, 258; *Greenaway v. Adams*, 12 Ves. 395; *Todd v. Gee*, 17 Ves. 273. This rule has been recently applied to a case in which certain persons named Stephen Jones and Margaret Daggerrell, being owners of a house and premises at Bath. Mr. Chitty, an attorney, entered into an agreement in writing with the plaintiff, whereby representing himself “as the lawfully authorized agent of them the said Stephen Jones and Margaret Daggerrell,” he agreed on that behalf for the sale to the plaintiff of the property in question. At the time of the execution of the agreement, the plaintiff paid to Chitty a deposit of 20*l.* It afterwards appeared that Chitty had no authority from Jones or Daggerrell, and the plaintiff filed a bill against the owners and A. B., praying a specific performance; and in the alternative, that if the agreement could not be enforced against the owners, then that Chitty might repay deposit and the costs incurred by the plaintiff and of the suit. Lord Langdale, M. R., held that the remedy of the plaintiff against Chitty being altogether at law, could not be had in this suit, and the bill was dismissed with costs. “The question is, whether, where a party having no sufficient authority, enters into an agreement, the disappointed purchaser can come here for the recovery of damages which he has been put to. No authority was produced, and I believe that none exists, for such an interposition by this Court. Judges have always in modern times thought that this was not the Court for the recovery of damages, and that the proper mode of obtaining relief was by an action at law, and it is reasonable that it should be so.” This judgment was afterwards affirmed, with costs, by Lord Chancellor Cottenham. *Sainsbury v. Jans*, 2 Beav. 462.

NOTICES OF NEW BOOKS.

Outlines of Law: or Readings from Blackstone, Mitford, Fonblanque, and other Text Writers; revised to the end of the last Session of Parliament. Part I, Common and Statute Law: Part II, Equity and Bankruptcy. Second Edition. By ROBERT MAUGHAM, Secretary to the Incorporated Law Society.

HAVING noticed the first part of this new edition of Mr. Maugham's "Outlines of Law," (see page 292, *ante*,) we shall now, in introducing to our readers the second part, leave the author to speak for himself. The following is the Preface which accompanies the second part, on Equity and Bankruptcy, and completes the volume. The subjects comprehended in the work, are brought down to the end of the last session of parliament.

"Referring to the 'Advertisement' of the First Part of this volume, it may not be inappropriate in closing the second, to observe that however sufficient for its purpose may be the Outline contained in Blackstone's Commentaries, of the various injuries cognizable in the Courts of *Common Law*, that work does not comprehend an adequate statement of the relief and protection afforded in Courts of *Equity*, or the remedies provided under the *Bankrupt Law*. The fact is, that nine-tenths of the volume of *Private Wrongs* are devoted to the Common Law remedies, and only one-tenth to Equity and Bankruptcy. The learned Judge in proceeding to this latter branch of his work thus writes:

'Let us next take a brief, but comprehensive view of the general nature of *Equity*, as now understood and practised in our several Courts of Judicature. I have formerly touched upon it, but imperfectly: it deserves a more complete explanation. Yet as nothing is hitherto extant, that can give a stranger a tolerable idea of the Courts of Equity, subsisting in England, as distinguished from the Courts of Law, the compiler of these observations cannot but attempt it with diffidence; those who know them best, are too much employed to find time to write; and those who have attended but little in those Courts, must be often at a loss for materials.'

"The passages referred to, as formerly touched upon, are as follow:

'Equity depending essentially upon the particular circumstances of each individual case, there can, in the general sense of the word, (although this must not be understood as applicable to Equity, as administered in our Equity Courts,) be no established rules and fixed precepts of Equity laid down, without destroying its essence, and reducing it to a positive law. And on the other hand, the

liberty of considering all cases in an equitable light must not be indulged too far; lest thereby we destroy all law, and leave the decision of every question entirely in the breast of the judge. And law, without equity, though hard and disagreeable, is much more desirable for the public good than equity without law: which would make every judge a legislator, and introduce most infinite confusion; as there would then be almost as many different rules of action laid down in our courts, as there are differences of capacity and sentiment of the human mind.'

"In another part he observes:

'These are the several grounds of the laws of England: over and above which *Equity* is also frequently called in to assist, to moderate, and to explain them. What equity is, and how impossible in its very essence to be reduced to stated rules, hath been shewn in the preceding section. I shall, therefore, only add, that (besides the liberality of sentiment, with which our Common Law judges interpret acts of parliament and such rules of the unwritten law as are not of a positive kind,) there are also peculiar Courts of Equity established for the benefit of the subject; to detect latent frauds and concealments, which the process of the Courts of law is not adapted to reach; to enforce the execution of such matters of trust and confidence, as are binding on conscience, though not cognizable in a Court of law; to deliver from such dangers as are owing to misfortune or oversight; and to give a more specific relief and more adapted to the circumstances of the case, than can always be obtained by the generality of the rules of the positive or Common Law. This is the business of our Courts in Equity, which, however, are only conversant in matters of property.'

"These passages (says the writer) and a single chapter on the general nature of Equity (which will be found in the following work) with a few pages on the Jurisdiction of Courts of Equity, and a very short summary of the form of proceeding, contain all that is to be found in the Commentaries on the subject of Equity. In the present edition, therefore, recourse has been had to other Text-Writers, and to the reports of adjudged cases, for the purpose of extending the Outline, and filling up some of the principal heads of Equity.

The reader will consequently find chapters on Equity in relation to Courts of Law; on infants and wards in Chancery; on the relief and protection afforded to married women; to idiots and lunatics; to the interests of charities; on enforcing the specific performance of agreements; and the execution of trusts.

The Outline relating to *Bankruptcy* has been principally compiled from the consolidation statute of 6 G. 4, c. 16, and the Bankruptcy Court Act of 1 & 2 W. 4, c. 56, with the alterations effected by the 1 & 2 Vict. c. 110, and the 2 & 3 Vict. cc. 11 & 29, and the judicial decisions bearing on persons liable to be bankrupt;—the Act of Bankruptcy;—the

petitioning creditor's debt;—the fiat;—the proof of debts;—the validity of transactions before the fiat;—disputing the fiat;—and the liabilities and protection of the bankrupt.

"The result has been, that in the second part of the present volume, more than seven-eighths of its contents are not to be found in any of the editions of Blackstone. But whilst the compiler ventures to say thus much in explanation of his objects, he yields to none in admiration of the great Commentator, whose work, if written in these changeable days, instead of sixty years ago, would, doubtless, have been all that the student could desire."

POINTS IN COMMON LAW PRACTICE, BY QUESTION AND ANSWER.

No. IX.

ARBITRATIONS.

156. Where there is a reference to two arbitrators, can witnesses be examined before one of the arbitrators alone, under any and what circumstances?
157. Can one of the arbitrators, a merchant, leave a question of law to be decided by another of the arbitrators, a lawyer, both signing the award?
158. Can an umpire be appointed by lot, with any and what consent?
159. Can an arbitrator proceed in the absence of either party, under any and what circumstances?
160. By what means can the attendance of witnesses be secured in a reference, and on what conditions?
161. Within what time must the arbitrator make his award?
162. Can an arbitrator make any, and what alteration in his award, after it has been executed?
163. Where an arbitrator has power to enlarge the time, at what period must he exercise it?
164. In what form and manner must the enlargement of the time be made by the arbitrator?
165. If the time be permitted to expire, will the subsequent proceedings be valid, and how can they be enforced?
166. When a party is entitled to costs under an award, when can he proceed to tax such costs?
167. Can an arbitrator award costs to be paid on a certain day, before the time expires for applying to set aside the award?
168. When the time for making an award is enlarged for three months from the date of the enlargement, are both days reckoned inclusive?
169. Can the officers of the Court refuse to draw up a rule for an attachment for non-performance of an award, where the award is not properly stamped?

170. Can the certificate of an arbitrator under an order of Nisi Prius, be set aside on the ground of a mistake on the effect of evidence?

LIFE AND FIRE INSURANCES.

DAYS OF GRACE.

A VERY general impression prevails that the assured can recover on policies of assurance in the event of a fire happening after the expiration of the year and within the fifteen days of grace allowed by the offices for the payment of the premium, but it is by no means prudent or safe to rely on such a principle, unless the extra time is allowed in the policy itself. If it is only given in the company's proposals or in the receipt for the premium, a difficulty arises in connecting the one or the other, not being under seal, with the policy which is under seal, and it is apprehended if the assured has manifested any indisposition to continue his insurance, or if the premium had been demanded and not paid, he could not recover.

With regard to life policies also, if the life drops after the expiration of the year, and within the days of grace, the premium being unpaid for the next year, care should be taken to tender and pay the premium within the prescribed period allowed by the office, or the assured could not recover; a similar tender is also needful in fire policies.

It would be desirable to put an end to all doubts upon the subject, if all the offices were to insert a clause in their policies to allow a given number of days to make the payment; those offices who wish to act honestly, will not hesitate so to do, as a loop-hole should not be left to enable them to get rid of their liability by a technical objection, instances not being wanting wherein they have done so successfully.

SELECTIONS FROM CORRESPONDENCE.

To the Editor of the Legal Observer.

MORTGAGE STAMP.

In the case propounded by "A Subscriber," p. 349, the *ad valorem* duty is payable. It may be argued that the stamp laws are in favour of the revenue, and therefore will be construed in furtherance of that object; but the 1000*l.* being in discharge of the mortgage debt, the surrender to A., the mortgagor, is to be considered as merely a reconveyance, and therefore is not liable to the *ad valorem* duty. But the conduct of the parties, and the whole cir-

circumstances of the case, forbid this construction. By the surrender to *A.* upon his admission, he became seised in fee of the estate. The relation of mortgagor and mortgagee, which before existed between *A.* & *B.* are destroyed; *C.* is to be taken in the light of a common trustee, in trust for sale; and *A.* & *B.* are *cestui que truste*, interested in the proceeds of the sale. And how have the parties acted? Why in the identical way they would act upon such a supposition, and in a manner to forbid the idea of the surrender being a simple reconveyance. *C.*, the trustee, surrendered the estate upon having 1000*l.* paid for the object of the trust. The 1000*l.* is the consideration money, without which it would have been an evident breach of trust in *C.* to have parted with the estate; and it was upon this ground alone that *B.*, the *cestui que trust*, directs him to convey. Therefore, it appears clear that the *ad valorem* duty must be paid. J. B. A.

ATTORNEYS' CERTIFICATE DUTY.

Sir,

I am very glad to find that you are still of opinion that the subject of the repeal of the attorney's certificate duty should be constantly agitated. I confess, however, that some more active step ought to be taken, towards carrying into effect the wishes of the profession, on a point of such extreme hardship and injustice. It has often surprised my professional brethren in the country, that the Law Society does not take the *initiative* in the matter.

It is a great pity that the "agitation" was not more violent, before the finances of the country became so embarrassed. And if we do not *begin in earnest*, we shall not be able to avail ourselves of the first favourable opportunity. The total amount of the certificate duty has been stated to be about 80,000*l.* per annum. If the country cannot spare the whole of it, would it not be well to accept a reduction of half, an "instalment of justice," with a proviso that the remainder should cease at a certain fixed period? Let it not be forgotten, that it is an act of *common justice* that we seek, and that nothing will be gained without perseverance and firmness. Let the matter once be brought fairly before the public, and I shall have no fear for the result; I shall, however, not be satisfied, until I see the matter taken up in earnest by some individuals, whose duty it shall be to report progress continually. Let it at all events be one of the standing topics of your useful journal, until the grievance be wholly removed.

LECTOR.

SUPERIOR COURTS.

Lord Chancellor's Court.

DUTIES AND LIABILITIES OF EXECUTORS.

If one of two executors interfere no further with the testator's estate than by joining in acts necessary and proper to give effect to the administration of the estate by his co-executor, he will not be held liable for the receipts of the co-executor, and in such a

case there is no difference between executors and trustees.

This was a bill filed against Mr. Matthews and Mr. B. Faunthony, to compel them to account for the estate of their testator, a Mr. Bartholomew. Matthews had become bankrupt, and the object of the suit was to have Faunthony made liable for the moneys received by Matthews, the acting executor, and misapplied by him. The Master having taken the usual accounts under the decree of reference to him, made his report, finding that Faunthony did not receive any part of the testator's estate. The parties interested in the estate took exceptions to the report. The cause now came to be heard on the exceptions, and for further directions.

Mr. Wigram and Mr. Parker, were in support of the exception. Mr. K. Bruce and Mr. Spence supported the Master's report. The points of the case may be collected from the following judgment given by the Lord Chancellor, after taking time for consideration.

The Lord Chancellor.—The decree in this case directed merely the usual accounts of receipts against the defendant Faunthony; it was, therefore not competent for the plaintiff to go into any case of wilful default, but it was open to him to prove any facts tending to establish actual or constructive receipts. On the exceptions, the only question is, whether the Master has done right in finding that Mr. Faunthony had not received any part of the property, and not whether having received any part, he may be protected by the provision of the will, by which it is provided "that if either of the executors shall, after receipt of any part of the money, pay over the same to the other of them, then he shall not be afterwards charged or responsible for what he shall so pay over." The exceptions embrace several points; first, that the receipts and payments on account of the general personal estate, that is, independently of the leasehold and trade, ought to be considered as receipts and payments by Faunthony as well as by Matthews; secondly, that Faunthony was chargeable equally with Matthews for so much of the 10,300*l.*, three per cent. reduced annuities, as was sold, producing 3825*l.* 14*s.* 10*d.*; thirdly, that Faunthony was chargeable together with Matthews with the rents and profits received from the freehold, copyhold, and leasehold estates, and from the dividends of stock; fourthly, that Faunthony was in the same manner responsible for the proceeds of the sale of the copyhold; fifthly, that he was in the same manner responsible for the proceeds of the sale of the leasehold; sixthly, that he was in like manner responsible for the receipts of the trade accounts; and seventhly, that he was in like manner responsible for 500*l.* 18*s.* 9*d.*, the proceeds of the sale of the trade and stock in trade. These exceptions do not raise any question as to the accounts taken by the Master, or as to the facts found by him, but they all dispute the propriety of the Master's finding that Faunthony was not liable jointly with Matthews for the several balances found due from the latter. I

have, however, examined the evidence, and I think the results of it are accurately stated in the report. The first exception being the result of the other exceptions, does not require a separate consideration. As to the second, the report finds that the 3825*l.* public stock, was sold, and the produce received by Matthews. It is to be observed, that the report does not state by whom that stock was sold, but as it stood in the testator's name, Faunthony must have joined in the sale. I do not find any evidence applicable to the transfer of the stock, but the plaintiff read passages from Faunthony's answer, in which he admits having joined in transfers of stock, but states that he did so only to enable Matthews to apply the proceeds in payment of the legacies, which he believes he did, and that he did not himself receive any portion of such proceeds. As to the third head of exceptions, I do not find any evidence of Faunthony having received any part of the rents or dividends of the stock, except that John Bartholomew says he received rents and dividends by the direction of Matthews and Faunthony, but he does not say he paid any part of such receipts to Faunthony. As to the fourth and fifth exceptions, the case as to the purchase money of the copyhold and leasehold property is so much the same, that they may well be considered together; and as to both, it is proved that Faunthony joined in acts which were necessary to effect the sale, such as surrendering the copyholds, executing the assignments of the leasehold, and signing receipts for the purchase money. As to all, it is, I think, proved, that Matthews did, and Faunthony did not, receive the purchase money. It is also manifest that the sale was not improperly made, the time having arrived at which the property was to be divided. The question as to the purchase money will therefore be, whether, under this decree, the master ought under such circumstances to have charged Faunthony with all or any part of the purchase money paid on these sales. With respect to the copyholds, the question is of no value, the whole of the proceeds of the sale appearing to have been properly applied; but with respect to the produce of the leasehold, a large balance was due from Matthews at the time of his bankruptcy. As to the sixth exception, the trade account, there is in the report, not excepted to, a statement disproving that Faunthony received any part of such receipts, but it also appears the whole of such receipts were properly applied, so that the question is of no value. As to the seventh, the produce of the trade or stock in trade sold to William Bartholomew, the evidence is, that Faunthony joined in the instruments necessary to give effect to that transaction, but Matthews alone received the consideration. What, then, is the liability, if any, which these circumstances impose on Faunthony? The distinction which has been taken in some cases between the responsibility of executors and trustees does not apply to the present case, because all the acts in which Faunthony joined being necessary to the administration of the estate,

he was in that respect in the same situation as a trustee. An executor, though he proves the will, and thereby places himself in the situation of having control over the testator's property, is not in general bound to act any further. He may be passive or active only, as far as is necessary to enable the other representatives to act in the administration of the estate, but it is part of the proposition that the act in which he joins, should be a necessary and proper act for the purpose of such administration. If it be required for the payment of debts or legacies, an executor is safe in joining in the sale of stock or other property, and permitting another executor to receive the proceeds for that purpose, as in *Hovey v. Blake-man*,^a but if he joins in such sale when the money is not required, and he had not reasonable grounds for believing it was so required, he is liable for the money so received by his co-executor as in the case of *Brice v. Stokes*,^b and *Underwood v. Stevens*.^c In the present case, the acts in which Faunthony joined, were properly acts in the administration of the estate, and his joining in those acts was indispensable for the purpose of such administration. This case comes, therefore, within the principle of the cases in which it has been held, that an executor merely joining in acts by which part of the estate is received by his co-executor, is not under the circumstances liable for the devastavit of his co-executor. I am, therefore, of opinion, that the Master has done right in not charging Faunthony with these sums, and that the exceptions must be overruled with costs.

Terrell v. Matthews and Faunthony. Sittings at Lincoln's Inn, December 11th and 14th, 1840; and July 16th, 1841.

Vice Chancellor's Court.

PRACTICE.—INJUNCTION.

Where a plaintiff has obtained the common injunction to restrain proceedings in an action, he will not be precluded from extending it upon a special application, to stay trial by reason of his having previously obtained a special injunction for other purposes connected with the suit.

The plaintiff and defendant having entered into an agreement for the lease of a farm belonging to the defendant, and a dispute having arisen respecting its terms, the defendant brought an action of trespass against the plaintiff, to restrain the proceedings in which, as well as to have the contract carried into effect, the present suit was instituted. The plaintiff had obtained the common injunction, and now moved, on the usual affidavit, that the answer of the defendant was material for the plaintiff in the action, to extend that injunction to stay trial.

Bethell, for the defendant, contended that the plaintiff had no right to the order. Before

^a 4 Ves. 596.

^b 11 Ves. 319.

^c 1 Meriv. 712.

the common injunction was obtained he had moved specially on notice for an injunction to restrain the pulling down certain erections, and also for staying proceedings in the action, and an order had been made as to the former part of the notice on the defendant's undertaking. It was also by no means clear that the discovery sought from the defendant could affect the issue to be tried, and although the Court usually gives credit to the allegations in the plaintiff's affidavit, yet if it were satisfied that such discovery could not be material, the injunction to stay trial would not be granted. The application too, was not made till just on the eve of trial, the action being appointed for trial for Wednesday next, and it was not usual for the Court to interpose under such circumstances. *Thorpe v. Hughes*, 3 Myl. & K. 761.

Bruce, contra.—The action was not commenced till June, and on the 13th of July the special notice of motion was given, so that no time had been lost. The addition to that notice with regard to staying proceedings was mere surplusage.

The *Vice Chancellor* said, it was extremely probable that the answer would afford a defence to the action at law, and the plaintiff was, therefore, entitled to the benefit of it; and as to the notice of motion on which the special injunction had been moved for, it was palpable that the part relating to the proceedings in the action must be treated as a nullity.

Order granted.—*Marley v. Smith*, July 25th, 1841.

Rolls.

PRACTICE.—PRELIMINARY ACCOUNTS.—CONSTRUCTION OF GENERAL ORDER.

The new order of May, 1839, which directs the taking of preliminary accounts, cannot be acted on, where the accounts required to be taken, are such as can only be properly ordered by decree.

This was a suit instituted for the administration of a testator's estate, and the answers of the executors having been put in, a motion was now made for an order of reference to the Master to take the accounts of the testator's estate.

Pemberton and Heathfield, in support of the motion said, the accounts required to be taken, being of the ordinary description, the application was within the fifth new order of May, 1839, for taking preliminary accounts.

Twiss and Wright, contra, for the executors said, that there were questions which could only be decided on the hearing, and therefore, the order could not be made.

Kindersley, Coleridge, and Dixon, for other defendants, also opposed the motion, and *Dixon* cited a case recently determined before the *Vice Chancellor*,* in which it was held that if any of the defendants were out of the jurisdiction, the order could not be made; and in this case there were certain parties interested

out of the jurisdiction, although they were not parties to the suit.

The *Master of the Rolls* said, that if the accounts were such as must be taken under decree, the order could not be made; but as these appeared to be only accounts that would be taken in the ordinary way, he should make the order.

Jaquet v. Edwards, Aug. 7th, 1841.

Queen's Bench Practice Court.

1 W. 4, c. 22, s. 4.—VIVA VOCE EXAMINATION OF WITNESS BEFORE MASTER.—OBJECTION.

It is no answer to a rule for examining a witness vivâ voce before the Master, under 1 W. 4, c. 22, s. 4, that he is the son of the party applying, if he is independent of his father; or that he is unwilling to submit to cross-examination.

A rule nisi had been obtained in this cause for examining a witness who was the son of the plaintiff, *viâ voce*, before the Master, in pursuance of the provisions of the 1 W. 4, c. 22, s. 4. The ground on which the rule had been obtained was, that the witness had expressed his intention to go to New York.

Cause was now shown, and it was urged that as there was no positive affidavit that the witness was going to New York, there was no sufficient ground made out for the motion. It was sworn in answer that it was believed that the witness was afraid to submit to a cross examination on the trial of the cause, and these circumstances, it was urged, coupled with the fact of the witness being the son of the plaintiff, would entitle the defendant to discharge the rule.

In support of the rule it was urged that from the plaintiff's affidavit it appeared that the witness was quite independent of his father. The other facts commented upon afforded no answer to the rule. *Weekes v. Pall*, 6 D. P. C. 462, was cited.

Wightman, J.—The rule must be made absolute. It is clear that the witness had expressed his intention to go abroad, and is about to do so, and he must be examined *viâ voce* before the Master: of course, if he were in England at the time of the trial, his examination could not be read. The arguments as to his being unwilling to submit to cross examination, and as to his being the son of the plaintiff, were of no avail. With regard to the latter, it was sworn that he was independent of his father.

Hoggins, in support of the rule; *M. Chambers and Butt, contra*.

Rule absolute.—*Carruthers v. Graham*, T. T. 1841. Q. B. P. C.

SETTING ASIDE EXECUTION IN EJECTMENT.—SCIRE FACIAS.—LACHES.—APPLICATION, BY WHOM MADE.—COSTS.

Where a period of ten years had elapsed between the signing judgment and the execution in ejectment, the judgment not having been revived by sci. fa., it was held that the want of the sci. fa. was such a substantial

* *Meinertzhagen v. Davis*, 10 Sim. 289.

defect, that although the tenant suffered more than four months to elapse before he moved to set aside the judgment, he was not deprived of his right to succeed in the application by reason of the laches.

The application in such a case may be made by the tenant who has been served with the declaration, but has not appeared, judgment having been signed against the casual ejector; but the Court will not award costs against the lessor of the plaintiff, there having been no consent rule.

Hoggins moved for a rule, calling upon the lessor of the plaintiff to shew cause why the writ of execution in this action of ejectment should not be set aside, and why the applicant, Peachey, who was the tenant, should not be restored to possession of the premises, in respect of which the action was brought. It appeared that the action had been commenced in the year 1830, when Peachey was served with the declaration, but he did not appear, and judgment was signed against the casual ejector. No further proceedings were taken by the lessor of the plaintiff until December, 1840; but on the 30th of that month a writ of *habere facias possessionem* was issued and executed, no *scire facias* to revive the judgment having been issued. The present motion was made on the 8th May, the last day of Easter term, and it was contended that the tenant was entitled to the rule on the ground that no *sci. fa.* had been issued.

Keating, in Trinity Term, shewed cause.—The omission to sue out the *sci. fa.* was an irregularity, of which it was necessary the applicant should take advantage promptly. The delay from the month of December to the 8th May, however, formed such a *laches* as disentitled him to succeed on this motion. But Peachey, at all events, was not the person to come to the Court. He had not appeared, and was unknown in the cause; and in *Bac. Abr. tit. Ejectment, A. 61*, it was laid down that a writ of error could not be brought in the name of the casual ejector, as the tenant was not in Court to sue it out. It might be contended, however, that the omission to sue out the writ of *sci. fa.* was not a mere irregularity, but operated to render the subsequent proceedings null; and *Mortimer v. Pigott*, 2 D. P. C. 615, seemed to go that length. But that decision had been questioned in *Arch. Prac. p. 519, n. 1*. If the rule, however, was made absolute, the judgment would not be set aside with costs. *Doe, d. Vernon v. Roe*, 2 Nev. & P. 237; S. C. 7 Ad. & El. 14.

Wightman, J.—What is the tenant to do, in a case where judgment has been irregularly signed against the casual ejector?

Keating.—Undoubtedly the Court might permit him to apply, but that hardly met the case now under consideration.

Wightman, J., was of opinion that as no *sci. fa.* had been issued, ten years having elapsed after the judgment, there was error in *materialibus*, and that the motion was not too late. *Doe, d. Vernon v. Roe* was so far, very like the present case; and it also afforded clear

authority that the tenant was entitled to come to the Court to make such an application. That case, however, was in favour of the lessor of the plaintiff as to the question of costs.

Hoggins urged that the tenant should have his costs.

Wightman, J.—There has been no consent rule, and there is no person against whom costs can be awarded. The case of *Goodright, d. Ward v. Badtittle*, 2 W. Bl. 763, is precisely like this: the only person who can be ordered to pay the costs is Goodtittle.

The rule was made absolute, with costs, against the lessor of the plaintiff, he consenting to pay them within a week; the tenant undertaking not to bring any action in respect of the irregular execution.

Goodtittle, *d. Murrell v. Badtittle*, T. T. 1841. Q. B. P. C.

WRIT OF SUBPŒNA.—CERTAINTY.

It is a sufficient answer to a rule for an attachment for not obeying a writ of subpœna, that the day on which the witness required to appear is stated differently in the writ and in the copy.

Such a rule will also be discharged, where, the action being in ejectment, the names of the lessors of the plaintiff are omitted in the description of the cause in the writ.

A rule had been obtained in this cause for an attachment against a witness, for not obeying a writ of subpœna. On shewing cause it was objected that the day on which the witness was required to appear was stated in the writ to be 27th May, and in the copy served to be the 24th May. In the original writ also, the cause was stated to be "John Doe, plaintiff, and Amos Thomson, defendant," the names of the lessors of the plaintiff being omitted. Either of these objections, it was urged, were sufficient to entitle the party to discharge this rule.

Platt and V. Lee shewed cause; Sir F. Pollock and Miller, in support of the rule.

Wightman, J.—Either objection would be fatal to the rule.

Rule discharged.—*Doe, d. Clark and others v. Thomson*, T. T. 1841.—Q. B. P. C.

THE EDITOR'S LETTER BOX.

For the state of the several bills which have been brought into the House of Lords, we refer our readers to the first article. We shall bring them under the further notice of our readers in due time.

L. L. P., in case of the death of the attorney to whom he is articulated, may be assigned by the executors or administrators.

The letters of "A Constant Reader," A. P.; "Civis A.;" T. W.; A. M. C.; M. U.; and J. D.; have been received, and shall all be attended to as opportunity allows.

The Legal Observer.

SATURDAY, SEPTEMBER 18, 1841.

——— “Quod magis ad nos
Pertinet, et nescire malum est, agitamus.

HORAT.

THE THREE CHANCELLORS.

THREE men now flourish in the House of Lords, all of whom have been Chancellors—all of whom are men of no mean pretensions. Need they be named? If our reader does not know them, we can assure him we have a poor opinion of his acuteness.

The first has a wonderful gift of clearly seeing, and clearly stating, and a happy absence of bias. He keeps his mind free till the last moment, weighs all matters in his balance, and assigns each its due value. His previous knowledge of a matter is not always great. He sometimes hears a principle which is to guide his decision for the first time; but he does not shrink from it on that account; he draws it within the grasp of his mind, handles it, and tries its weight, sees how it is supported, presses it a little perhaps, and, if it stands the pressure, acts according to it. If you asked this great man what was decided in any case, naming it, (*Doe v. Tomkins* for instance) it is ten to one that he would tell you he did not know the case at all, for he cannot afford to treat such things with contempt; but tell him the principle on which it was decided, and he will soon tell you what it is worth, whether he knows it, and if he does not, you will see him sift it, prove it, melt it down. If it be dross, it will fly off in dust—for it cannot stand the test of coming in contact with the crucible of his mind: if it be sterling, it remains there imprinted—for this great spirit has a memory more durable than steel, and what is

there engraved becomes parcel thereof. You are sure, in this great man, of a quick and ready perception, a vast and accurate memory, a clear and searching, although not a profound judgment, a strict impartiality, a mind sceptical till the very moment when decision is necessary, but then intrepid and prepared. He does not shrink from the real difficulties of the case; if he cannot fathom them, he admits them, the mark of a mind confident and fearless (for this is the character of the man). He is, perhaps, rather too fond of arriving quickly at the end; he will sometimes try to cut off a corner—an unwise habit, and one which causes the judge frequently to walk a long way round. He shews himself audibly annoyed by a tedious argument, and you will see him chafe a little; but he keeps this under, for his manner is kind, and in general respectful to the advocate. His mind is not always in his work.

He has now sounded all the depths of law and equity, and he would have been a great judge in equity, if he had not left an undying reputation at common law. His manner of disposing of *nisi prius* business is admitted by all never to have been surpassed; his decisions in banc, the perfection of human reason. He is now again the fountain of equity, his mind clear as ever, his perception unimpaired, his faculties as bright. Heaven grant, then, that the casket which holds jewels so brilliant may be as imperishable!

Next turn we to another, who has in his time wielded the power of the first lay subject of the empire. A spirit of a different order is here, with qualities as great,

but different. Here we have a mind, which, with untiring flight, can keep its steady course, unexhausted, to the very verge of human knowledge. To confine it to one art or science would show an utter ignorance of its peculiar properties. It is illimitable; it is vast as space; it pervades the whole range of knowledge. It is known only by what it has illustrated and adorned: but it is equally capable of appearing in other forms, as useful and delightful. Unbounded in its power as nature, we worship it in what we see and feel; but our wonder and pleasure is limited by our own poor powers of conceiving what it has accomplished, not by what it can do. We should feel no more surprise at any fresh discoveries of its power, than that a new star had been found, or than that, as the result of scientific combination, another steam-engine were discovered. We know the power is there. The form may remain undeveloped, but it only wants the will or the opportunity to bring it to light.

Knowing this great man to possess these extraordinary qualities, the envy common to human nature is desirous of finding fault, of bringing him to the ordinary level; and so far from being lost in amazement at all he has, is curiously spiteful in finding what he has not. And who shall stand this scrutiny? I know not; but I know that all that can be said against him amounts not to one tithe of what can be said in his praise; and that when it is said of such a man that "his day is gone by," "his power is over," it is as absurd, while his mind remains unimpaired, as to say that the sharpened steel will not cut, or that the fire will not burn.

And who have we third on our list? One certainly inferior (and that is a bold word) to neither of the other two. His reputation is, perhaps, not so brilliant, but it may be even more solid and enduring. He lays claim to the character of a perfect judge. He satisfies the mind in this point. He brings to the decisions of a cause all the requisite qualities; he is master of the law on the subject; a long practice and experience at the bar has made him familiar with the details on the subject; all the petty equities which entwine themselves into a suit are present to his mind; that word gives *election*; this fact proves *notice*; here lurk *costs*, and there lie *parties*. In opening a cause, in hearing the pleadings read, in noting the statements, he goes on level with the advocate. A sentence tells the point; an expressive look brings the doctrine to his recollection; an emphasis

reminds him of the leading case; a repetition fixes the gist of the cause in his memory. There is no stating of acknowledged principles; no angling as to whether the judge really does know the point or not; no discovering, when it is half heard, that in fact he does not. Certain points are admitted as between all. No one ventures to argue these, any more than that two and two make four. Now this state of things is a wonderful help in disposing satisfactorily of business.

Thus well set off, being fairly up to the mark as to what must be known to decide the cause aright, then we have from this great man an attentive hearing of the facts, a wonderfully accurate memory of them, and an almost intuitive power of seizing on the leading principles on which the cause turns, and a demolition of all the figments which surround it. He finds that the best thing a judge can do is to hear the man who has done his best to understand all the bearings of the cause, and who has often been familiar with it for years. He is content, therefore, in the first place, to hear not only one counsel, but as many as the parties please to employ. He himself remains quiet, looking quietly on, and shewing no sign of his opinion. Nevertheless he has got one pretty soon, but he is willing to hear all that can be said; it is not easy, however, to change this opinion, which would be unfortunate, only that it is almost always the right one. Although apparently so tranquil, he has all the time been mastering the facts, weighing the arguments, and pondering his judgment. This, at last, is pronounced, and gives almost always satisfaction. To whom? To the parties whose rights are decided against. We fear not. No: but to the professional men employed on both sides. They are the only persons whom a judge can satisfy. They have found due weight given to all they said; they have had the cause decided on fixed principles, not vaguely limited, but broadly laid down; not curiously cut up to suit the particular circumstances of the case, but boldly enunciated as a guide to other cases. This is the leading feature of this great judge.

And which of these three eminent men should we prefer? This is a point which my reader must determine for himself. I am content with the satisfaction of thinking that the country has such men, willing to devote their best services for her benefit.

THE
LAW RELATING TO ABSTRACTS
OF TITLE.

No. II.

TITLES UNDER DESCENTS.

THE first point to be considered in a title under descents is, how far it is affected by the recent statute altering the law in this respect, 3 & 4 W. 4, c. 106. The statute is, however, of so recent a date, as not to affect many titles of this nature.

A title, under a continued chain of descents may be a good one, although there are no title-deeds whatever;^a but a possession must be shewn, consistent with the alleged title. The possession must, therefore, be proved by the production of leases granted by the owners of the land from whom the vendor claims, by land-tax receipts, shewing that such owners were assessed to the land-tax for the lands, or some other evidence, as recitals, steward's accounts, old maps, cases submitted to counsel, or some other documents which may either prove an ownership conformable with that alleged, or raise a presumption thereof.

A pedigree should always accompany a title of this nature, which must be authenticated so as to be capable of being proved in a Court of Law. The most usual and satisfactory evidence consists of certificates of births, marriages, and burials; and if these cannot be produced, such secondary evidence must be given as would be admissible in a Court of Justice. Thus extracts from Family Bibles, inscriptions on tombstones, statements or recitals in deeds, wills, although cancelled, or proceedings in Chancery, affidavits made by persons intimate with the family, and similar proofs, are all admissible. Tombstones and mural inscriptions in churches are also admissible; and in a recent case, the inscription having been effaced twenty-five years previously, copies made of it when the inscription was entire, were admitted.^b Recitals in deeds are frequently relied on in abstracts of this nature, as evidence of facts therein referred to; but they must be admitted with certain qualifications. Strictly, they are never evidence as against persons who are not parties to the deed. Nevertheless, if they are contained in old deeds, and supported by long

uninterrupted possession, they are frequently received as sufficient evidence; but each case as to this must rest on its particular circumstances; as to these, we may cite the observations made by Lord Gifford, M. R., in *Fort v. Clarke*.^c In that case there was a conveyance to a purchaser in 1793, from persons residing in Bermuda, of lands then in their possession, and to which, subject to an outstanding but satisfied mortgage term, they claimed title under an entail created in 1732, through a descent recited in the deeds. The term was subsequently assigned by the mortgagee to the vendor, but uninterrupted enjoyment under his conveyance will not enable him to make a good title, if unsupported by extrinsic evidence of the pedigree, recited in the deeds, or of the possession prior to 1793, conformable to that pedigree. Adverting to the evidence produced, Lord Gifford said—"It has been contended that the recitals in the deed of 1793, ought to be received as sufficient evidence of the pedigree of the parties, who then conveyed to Brickwood. These recitals, whatever effect they may have against the parties to the deeds, cannot, as against third persons, be any evidence of the pedigree. *If evidence had been given that possession had followed and accompanied the pedigree, if between 1747 and 1793, a possession had been shewn passing from parent to child under the entail created in 1732; that enjoyment would have been a strong circumstance to prove that the persons named in the pedigree did, in fact, fill the characters which it was in 1793 alleged that they did fill. In 1766, affidavits were made with a view to enforce the claim of the daughter, through whom the plaintiff derives title; and in 1785, fresh affidavits with respect to the state of the family were made for the same purpose. On neither occasion, however, was the claim enforced, and there is not the slightest proof of any possession from 1747 to 1793, in those through whom the title is not traced; it does not even appear that the possession was ultimately obtained. With nothing but the recitals of the deeds executed in 1793, the conveyance to Brickwood, and the subsequent enjoyment under the conveyance, with no proof of the pedigree on which the title depends, or of possession from 1747 to 1793, according to that pedigree, I cannot say that the Master has drawn a wrong conclusion, and that this is a title which a purchaser can be compelled to accept."*

^a 1 Prest. Abr. 23; *Floyer v. Struckley*, 12 Vin. Ab. 57, pl. 2.

^b *Slaney v. Wade*, 7 Sim. 596: S. C. 1 Myl. & C. 338.

^c 1 Russ. 601.

"A point deserving consideration (says Mr. Jarman)^d in framing conditions of sale is, whether the purchaser should not be restrained from calling for evidence of extrinsic facts, as heirship, intestate's death, &c., which are recited or taken notice of in deeds of a certain antiquity. The strict rule, it is conceived, is, that the purchaser is entitled to require evidence of all facts material to the title, whether stated in deeds, or not occurring during the period for which an adverse claim might be sustained, *i. e.*, for sixty years. Such a rule, it is obvious, must often involve the vendor in great difficulties. A case has occurred within the observation of the editor, in which a considerable part of the purchase money was absorbed by the expenses of collecting evidence of the heirship of certain persons, who conveyed as co-heiresses of the last owner in 1780. So large was the body of evidence requisite, in order to establish the relationship between the parties and the deceased, to prove a person, standing in the relationship of second cousin, to be heir, no fewer than six marriages, six baptisms, and two deaths at the least must be proved, besides the failure of the lineal descendants of the ancestor, and non-existence or extinction of all elder collateral branches of the issue of the several persons through whom, either in the ascending or descending lines, the pedigree is to be traced."

These observations peculiarly apply to a title under a descent.

LORD DENMAN'S ACT RELATING TO COSTS.

At p. 466 of our last volume, we considered the provisions of the above act (3 & 4 Vict. c. 24), which regulates the right of plaintiffs to costs in actions of trespass, and trespass on the case, where a verdict is found for less than 40s. damages. The words of s. 2 are:—

"That if the plaintiff in any action of trespass, or of trespass on the case, brought or to be brought in any of her Majesty's courts at Westminster, or in the Court of Common Pleas at Durham, or in the Court of Common Pleas at Lancaster, shall recover by the verdict of a jury less damages than 40s., such plaintiff shall not be entitled to recover or obtain from the defendant, in respect of such verdict, any costs whatever, whether it shall be given upon any issue or issues tried, or judgment shall have passed by default, unless the Judge or presiding officer before whom such verdict shall have been

obtained, shall *immediately* afterwards certify on the back of the record, or on the writ of trial, or writ of inquiry, that the action was really brought to try a right, besides the mere right to recover damages for the trespass or grievance for which the action shall have been brought, or that the trespass or grievance in respect of which the action was brought, was wilful and malicious."

The result of the cases as to the time when the certificate must be given, was that it must be given before another cause was called on, on the principle that the Judge who tried the cause should have nothing to distract his attention, or interfere with his memory in determining whether he ought to certify. Since our former article, two important decisions have been pronounced by the Court of Exchequer very materially differing in the construction to be put on the statute, from the former decisions. In *Thompson v. Gibson*, 9 Dowl. 717, which was an action on the case for a nuisance to a market, the jury found a verdict in favour of the plaintiff with one shilling damages. It was tried at Appleby, in Westmorland, and was the last cause on the list. After the verdict was returned, no immediate application for a certificate was made, and the Court was, according to the usual practice, adjourned to the Judge's lodgings. Counsel then, without delay, followed the Judge to the lodgings, and applied for a certificate. *Coltman, J.*, who was the Judge, granted it, and requested that that fact might be communicated to the opposite party. On discussion afterwards before the Court of Exchequer, that Court was of opinion that the certificate was duly granted according to the provisions of the statute. In the following case, however, which has not yet been reported, it was held that the word "*immediately*," means within a reasonable time. It is the case of *Page v. Pearce*.

Cresswell and *Barstow* shewed cause against a rule setting aside the master's *allocatur* allowing costs to the plaintiff in this cause. It was an action of trespass, in which a writ of inquiry had been executed before the undersheriff of Dorsetshire, and the jury assessed the damages at one farthing. An application was made to the undersheriff for a certificate under the 3 & 4 Vic. c. 24, s. 2, and at the adjournment of the Court for the purpose of taking an inquisition under a writ of elegit in another case, that officer stated that he would certify that the grievance was wilful, but he had not made up his mind that it was malicious. Subsequently the plaintiff gave notice of taxation, and on attending before the master, the writ of inquiry was produced, when there appeared indorsed upon it the undersheriff's

^d 1 Byth. 121, 3d edit.

certificate that the grievance in respect of which the action was brought was wilful and malicious. The plaintiff's costs were accordingly allowed.

Frie and Bond supported the rule.—A judge has no authority whatever over the record after the trial. *Shuttleworth v. Cocker*, 9 Dowl. 77, decided that the judge ought to certify directly, or at all events on the day of trial. The statute requires that it shall be done "immediately afterwards." If it is competent for the judge to certify after the trial of another case, or after the transaction of other business, he may do so after several subsequent trials. The clear meaning of the statute is, that no other business shall be transacted before the judge has determined whether he will certify.

Per Curiam.—This rule must be discharged. It has been decided that an immediate indorsement on the record never could be meant. Then what better substitute can there be than a reasonable time, especially as an immediate indorsement can be of no importance at all? The judge's commission is contained in the writ, and his authority under the commission may be said to expire with the trial or investigation? but as an act of parliament requires him also to consider the propriety of granting or refusing a certificate, he has a new commission for that purpose. Though another trial may have expired, yet if the act says only that the judge shall certify immediately after the trial, and does not more specifically define the time, it is sufficient if it is done within a reasonable time. Here, as far as the word 'wilful' went, the certificate may be said to have been made at the trial, and the subsequent addition seems to have been made upon further consideration. We think that a judge need not certify before he takes another case. He surely may take time to consider; and can it be said he ought to postpone every other case, until he has made up his mind? Such a course would be unreasonable, and very inconvenient. The act cannot be construed literally, without taking away all power of deliberation.

Rule discharged.

As to the mode in which the certificate is to be given, the case of *Spain v. Cadell*, 9 Dowl. 745, is also very important in cases of arbitration. In that case the cause was referred to an arbitrator, by an order of Nisi Prius, a power being reserved in the order for the arbitrator to certify if he thought proper, under 3 & 4 Vict. c. 24, s. 2, in the same manner "as a judge at Nisi Prius." After hearing the case, the arbitrator made his award in favour of the plaintiff, with one shillings damages, and certified under the statute, and entered his certificate on the award. It was held by the Court of Exchequer, that the certificate need not be indorsed on the record; but that the certificate must be given at the time of making the award.

CONSOLIDATION AND AMENDMENT OF THE LAW OF ATTORNEYS.

(Continued from p. 391.)

THE following clauses re-enact (with some modifications) the *restrictions* which were deemed necessary in the former statutes.

32. That no attorney or solicitor who shall be a prisoner in any gaol or prison, or within the limits, rules, or liberties of any gaol or prison, shall or may, during his confinement in any gaol or prison, or within the limits, rules, or liberties of any gaol or prison, as an attorney or solicitor, in his own name, or in the name of any other attorney or solicitor, sue out any writ or process, or commence or prosecute or defend any action or suit in any Courts of Law or Equity; and such attorney or solicitor, so commencing, prosecuting, or defending any action or suit as aforesaid, and any attorney or solicitor, permitting or empowering any such attorney or solicitor as aforesaid, to commence, prosecute, or defend any action or suit in his name, shall be deemed to be guilty of a contempt of the Court in which any such action or suit shall have been commenced or prosecuted, and punishable by the said Court accordingly, upon the application of any person complaining thereof; and such attorney or solicitor, so commencing, prosecuting, or defending any action or suit as aforesaid, shall be incapable of maintaining any action or suit at law or in equity for the recovery of any fee, reward, or disbursement for or in respect of any business, matter, or thing done by him whilst such prisoner as aforesaid, in his own name or in the name of any other attorney or solicitor.

33. That if any attorney or solicitor shall wilfully and knowingly act as agent for any person not duly qualified to act as an attorney or solicitor as aforesaid, or permit or suffer his name to be anyways made use of upon the account, or for the profit of any unqualified person, or send any process to such unqualified person, or do any other act thereby to enable such unqualified person to appear, act, or practise in any respect as an attorney or solicitor in any suit at law or in equity, knowing such person not to be duly qualified as aforesaid, and complaint shall be made thereof in a summary way to any of the said Superior Courts wherein such attorney or solicitor has been admitted, and proof made thereof upon oath to the satisfaction of the Court that such attorney or solicitor hath wilfully and knowingly offended therein as aforesaid, then and in such case every such attorney or solicitor so offending, shall and may be struck off the roll, and for ever after disabled from practising as an attorney or solicitor; and in that case and upon such complaint and proof made as aforesaid, it shall and may be lawful to and for the said Court to commit such unqualified person, so acting or practising as aforesaid to the prison of the said Court, without bail or mainprize, for any term not exceeding one year.

34. That no attorney or solicitor shall be

capable to continue or be a justice of the peace for any county within that part of Great Britain called England, or the principality of Wales, during such time as he shall continue in the business and practice of an attorney or solicitor.

35. That the prohibition last hereinbefore contained shall not extend or be construed to extend to any city or town, being a county of itself, or to any city, town, cinque port, or liberty, having justices of the peace within their respective limits and precincts by charter, commission, or otherwise, but that in every such city, town, liberty, and place, attorneys or solicitors may be capable of being justices of the peace, and in such manner only as they might have been if this act had never been made, anything hereinbefore contained to the contrary thereof in anywise notwithstanding.

36. That from and after the passing of this act, in case any person shall, in his own name or in the name of any other person, sue out any writ or process, or commence, prosecute, or defend any action or suit, or any proceedings in any Court of Law or Equity, without being admitted and enrolled as aforesaid, or being himself the plaintiff or defendant in such proceedings respectively, every such person shall and is hereby made incapable to maintain or prosecute any action or suit in any Court of Law or Equity for any fee, reward, or disbursements, on account of prosecuting, carrying on, or defending any such action, suit, or proceeding, or otherwise in relation thereto, and such offence shall be deemed a contempt of the Court in which such action, suit, or proceeding shall have been prosecuted, carried on, or defended, and shall and may be punished accordingly.

37. That in case any person shall commence or defend any action, or sue out any writ, process, or summons, or carry on any proceedings in the Court, commonly called the County Court, holden in any county in that part of Great Britain called England and Wales, who is not, or shall not then be legally admitted an attorney or solicitor, according to this act, or shall not himself be plaintiff or defendant in such proceeding respectively, such person shall and is hereby made incapable to maintain or prosecute any action or suit in any Court of Law or Equity, for any fee, reward, or disbursement, on account of prosecuting, carrying on, or defending any such action, suit, or proceeding, or otherwise, in relation thereto, and such offence shall be deemed a contempt of the Court in which such action, suit, or proceeding shall have been prosecuted, carried on, or defended, and shall and may be punished accordingly.

Next follow several sections as to *costs*, some of which will be found to be new and important.

38. That from and after the passing of this act, no attorney or solicitor shall commence or maintain any action or suit, for the recovery

of any fees, charges, or disbursements, or of any claim or demand for any business done by him, until the expiration of one calendar month after he shall have delivered unto the party to be charged therewith, or sent by the post to, or left for him at his office of business, dwelling-house, or last known place of abode, a bill of such fees, charges, and disbursements, which bill shall be subscribed with the proper hand of such attorney or solicitor, or of the partner or one of the partners of such attorney or solicitor, or enclosed in a letter subscribed in like manner referring to such bill, and upon application of the party or parties chargeable by such bill, within the said time or space of one calendar month after such bill shall be delivered or sent as aforesaid, it shall be lawful for the Lord High Chancellor, or the Master of the Rolls, or Vice Chancellor, or for any of the Courts aforesaid, or any Judge or Baron of any of the said Courts respectively in which the business contained in such bill or any part thereof shall have been transacted, and they are hereby required to refer the said bill, and the said attorneys or solicitor's demand thereupon to be taxed and settled by the proper officer of such Court, without any money being brought into Court for the said purpose. But in case no such application shall be made within one month as aforesaid, then it shall be lawful for the Lord High Chancellor, or Master of the Rolls, or Vice Chancellor, or any Judge of the Courts of Queen's Bench, Common Pleas, or Exchequer, upon the application of any attorney or solicitor, who may have delivered such bill of costs as hereinbefore is mentioned, or upon the application of any party chargeable by such bill, or of any person on his behalf, (if they shall see fit, but not otherwise) to refer the said bill of costs, and the said attorneys or solicitor's demand thereupon, to be taxed and settled by the proper officer, with such directions, and subject to such conditions as they shall think proper. And if the attorney or solicitor by whom such bill of costs shall be delivered, or the party chargeable by such bill, having due notice, shall refuse or neglect to attend such taxation, the said officer may proceed to tax and settle the said bill and demand *ex parte*. And in case the application for such taxation be made by the party chargeable with the said bill, the said respective courts are hereby authorized to award the costs of such taxation to be paid by the parties according to the event of the taxation, that is to say, if the bill when taxed, be less by a sixth part than the bill delivered, then the attorney or solicitor shall pay the costs of the said taxation, but if the said bill when taxed, shall not be less by a sixth part than the bill delivered, then such costs of taxation shall be paid by the party chargeable with the said bill so taxed. Provided always, that in case no application shall be made to tax such bill of costs of an attorney or solicitor until after the expiration of twelve calendar months from the delivery thereof in manner aforesaid, the same shall not be subject to taxation except under special circumstances, to be proved to

the satisfaction of the Court or Judge to whom such application shall be made.

39. That upon the taxation and settlement of any such bill of costs as aforesaid, the certificate of the officer by whom such bill shall be taxed shall (unless set aside or altered by order, decree, or rule of Court), be final and conclusive, as to the amount thereby certified. And it shall be lawful for any of the Courts aforesaid, or for any Judge thereof, upon the application of either party, to order and direct judgment to be entered thereon, with costs, or to make such other order thereon as they or he shall deem proper.

40. That it shall be lawful for any Court of Law or Equity in its discretion to allow any set off of damages or costs between the same parties, notwithstanding that such set-off may defeat or prejudice the lien for costs of any attorney or solicitor.

41. That the payment of any bill of costs shall in no case preclude the Court or Judge, to whom application shall be made, from ordering, if they shall see fit, the taxation thereof, provided the application to tax the same be made within twelve calendar months from the delivery thereof.

42. And whereas by law, attorneys and solicitors are prohibited from taking from their clients, or from any other person, any security or guarantee for the payment of future costs: And whereas it is expedient that the law in this respect should be altered and amended, and that attorneys and solicitors should be permitted to take such security or guarantee for the payment of their future costs as their clients or such other persons may be willing to give: Be it therefore enacted, that it shall be lawful for any attorney or solicitor to accept and take from any person any mortgage, bond, or other security or guarantee which such person may be inclined to give for the payment as well of the costs actually incurred as of those which may thereafter be incurred in prosecuting or defending any action or suit, or other proceeding at law or in equity. Provided always, that no further sum shall be receivable upon such security or guarantee than shall be found to be actually due to such attorney or solicitor, upon a taxation of his bill of costs, in case the same shall be ordered to be taxed in the manner hereinbefore directed.

The following are the *exceptions* to the provisions of the act.

43. That every person who at the time of the passing of this act shall have completed his period of service, according to the laws in force at the time of the passing of this act, but shall not have been admitted an attorney or solicitor in pursuance of such service, shall, if otherwise qualified, be capable of being admitted and enrolled an attorney or solicitor, in pursuance of the provisions of this act, in the same manner in all respects as if he was actually bound by contract in writing at the time of the passing of this act.

44. That all persons who previously to the passing of this act shall have been duly ad-

mitted and enrolled attorneys or solicitors of the Courts of the Duchy Chamber of Lancaster at Westminster, or of the Courts of the Counties Palatine of Lancaster and Durham, or either of them, shall and may be admitted and enrolled attorneys and solicitors in the said High Court of Chancery, or all or any of the said Courts of Queen's Bench, Common Pleas, or Exchequer, at Westminster, in pursuance of the provisions of this act, without examination.

45. That nothing in this act contained shall extend, or be construed to extend to the examination, swearing, admission, or enrolment of the Six Clerks of the Court of Chancery, or the sworn clerks in their office, or the writing clerks belonging to the said Six Clerks, or the Cursitors of the said Court, or of the Petty Bag Office, or of the Clerks of the Queen's Coroner and Attorney in the Court of Queen's Bench, or of the attorneys or clerks of the office of the Queen's Remembrancer of the Court of Exchequer at Westminster, for the time being; but that the said clerks and attorneys respectively shall and may be examined, sworn, admitted, and practise in their respective courts and offices, in like manner as they might have been or done before the making of this act.

46. That this act, or any thing herein contained shall not extend, or be construed to extend, to the examination, swearing, admission, or enrolment of persons to be solicitors of the Treasury, Customs, Excise, Post-office, Stamp Duties, or any other branch of her Majesty's revenue, or to the solicitor of the city of London, for the time being, or to the assistant of the council for the affairs of the Admiralty or navy.

The following clause enabling the Judges to authorize all attorneys in town and country to administer oaths, is new.

47. That it shall and may be lawful for the Master of the Rolls, jointly with the Judges of the Courts of Queen's Bench, Common Pleas, and Exchequer (or with any eight or more of them, of whom the chiefs of the said Courts shall be three), from time to time, by any order or orders under their hands, to authorize and empower attorneys and solicitors to administer oaths and affirmations, and to receive declarations in the nature of affidavits either in town or country, in all actions, suits, and proceedings in any Court of Law or Equity, or in matters of bankruptcy or lunacy, and from time to time to make such rules and regulations with respect to the persons of or before whom such oath or affirmation may be admitted, or by whom such declarations may be received, and the time and manner of administering or receiving the same, as they shall think fit; and all oaths and affirmations which shall be sworn or made before any attorney or solicitor, in pursuance of, or under the authority of such order, shall be as valid and effectual as if the same were sworn or made before any of the said Judges of the said Courts of Law or Equity.

The bill concludes with the following usual clauses.

48. That in the construction of this act, the word "month" shall be taken to mean a calendar month, and every word importing the singular number only, shall extend and be applied to several persons, matters or things, as well as one person, matter or thing; and every word importing the plural number, shall extend and be applied to one person, matter, or thing, as well as several persons, matters, or things; and every word importing the masculine gender only, shall extend and be applied to a female, as well as a male; and the word "person," shall extend to any body politic, corporate, or collegiate, municipal, civil, or ecclesiastical, aggregate or sole, as well as an individual, unless in any of the cases aforesaid it be otherwise specially provided, or there be something in the subject or context repugnant to such construction.

49. That this act may be altered or repealed by any act to be passed in this present session of parliament.

The first schedule to the bill contains a list of the acts either wholly or partially repealed. This has been done in a convenient method: the first column gives the date of the statute, the second its title, and the third the extent of the repeal. We shall probably print this schedule in our next number, as it will show in a tabular form, the existing statutes, and the intended alterations.

The second schedule contains a list of all the fees to be received for registering articles, examination, admission, annual certificates, &c.

The new provisions concerning the *qualification* of attorneys are:—1. That no attorney can take an articulated clerk until he shall have been in practice for five years. 2. That one of the three years of service of graduates may be served with the London agent. 3. That if the articles are not registered within three months, the service will be computed from the time of registry. 4. That the Master of the Rolls and the Judges may concur in making a joint appointment of examiners. 5. That a registrar of annual certificates be appointed, and a general alphabetical roll of all the Courts be kept. That all attorneys and solicitors make an annual declaration of the time of their admission and of what Court admitted; that the registrar of certificates examine the statement, and give a certificate, which shall afterwards be stamped. 6. The Judges are empowered to make orders for the renewal of certificates which have been discontinued for more than a year. This will render motions in Court for re-admission unnecessary.

THE NEW CHANCERY ORDERS.

It seems doubtful whether a solicitor would be justified in consenting to receive by post, all kinds of notices from all kinds of persons. Pair practitioners, as between each other, would find no objection to it, for although there may be irregularity now and then in the Post Office, absolute miscarriage is very rare.

The fallibility of the Post Office does not, therefore, constitute a sufficient objection to services being effected by it; mistakes and miscarriages in service of notices may happen under the present practice, and were the post the medium, they would not be more frequent.

It is, however, the chance of false-swearing; it is that they cannot feel safe with some of their brethren, which will prevent solicitors *volunteering* the consent proposed. I beg, therefore, to make the following proposal:—That Chancery and Common Law notices should, by general order, be servable by post, and to obviate the latter of the risks above referred to, the receiving house-keeper should give a receipt (for which he should be paid one penny) on a duplicate copy of the address, the address and copy both having the name of the suit or action, the species of proceeding enclosed, the name of the attorney, and of the clerk posting the letter, and the hour of posting. Thus:

Doe v. Roe,
Plea.

J. Sims, Solr.,
by W. Tubb.

5½ o'clock, Sept. 1, 1841.

Mr. John Sims,
Solicitor,
16, Lothbury.

Where an affidavit of service is necessary, this duplicate copy of the address might be annexed to it, and the deposition should state that the place of address agrees with the residence book. In that case, there should be one such book for the Chancery and Law Courts, and not two, as at present.

The absurdity of troubling the Judges and Masters in Chancery with signing the jurats of affidavits sworn before their clerks in an adjoining room, has often been remarked upon, and the necessity of having officers specially appointed for taking affidavits (if London solicitors are less to be trusted with that authority than those in the country) has also been insisted on.

Not less to be deprecated is the system of bringing persons from their business and engagements in the city, to go through this ceremony in Chancery Lane.

As a general measure of improvement, therefore, let affidavit-officers be appointed, placing the office of one of them in Chancery Lane, and the other in the city; let them be empowered to take affidavits in all the Courts, both Law and Equity; and with reference to the present question of serving notices, let the attorney's residence book be in the one office, and a duplicate of it in the other.

I submit that the mode of service I have suggested, would be a source of economy and convenience to solicitors, and through them to their clients.

More than one-third of the solicitors are in the city, something less than two-thirds in the neighbourhood of the Inns of Court: those westward are but few in number.

H. G.

JUDGMENTS AFFECTING REAL ESTATES.

THE recent statutes relating to judgments having now come into operation, it is no less important to the profession to ascertain what effect they will have, 1st, on parties who have had notice of a judgment, although not registered; and 2dly, as against those who have had no notice of a registered incumbrance, than it is to know the enactments with respect to searching for judgments.

1st. Since the 1 & 2 Vict. c. 110, was passed, doubts had existed as to whether the 19th section of that act would affect purchasers, mortgagees, or creditors, having notice of a judgment not registered in pursuance thereof. But that point is now set at rest by the 3 & 4 Vict. c. 82, s. 2, which, in substance, enacts that no such judgment, decree, &c., shall, by virtue of the said act, affect any lands, tenements, or hereditaments, *at law or in equity*, unless a memorandum or minute shall have been left with the Senior Master of the Court of Common Pleas, *any notice of such judgment or decree notwithstanding*.

2d. This latter statute, however, does in nowise abridge the operation of the 2 Vict. c. 11, by the 5th section of which it is enacted, "that as against purchasers and mortgagees, without notice of any such judgment, decrees or orders, rules or orders as aforesaid, none of such judgments, decrees or orders, rules or orders, shall bind or affect any lands, tenements or hereditaments, or any interest therein, further or otherwise, or more extensively in any respect, *although duly registered*, than a judgment of one of the superior Courts aforesaid would have bound such purchaser or mortgagee, before the said act 1 & 2 Vict. c. 110, where it had been duly docketed according to the law then in force."

The object of this provision was, no doubt, to restore to purchasers without notice, the protection against judgments which they had before enjoyed. But now, since the 3 & 4 Vict. c. 82, has rendered it imperative on every incumbrancer to have his judgment duly registered, in order to make it available, the expediency of still preserving the 5th section of the 2 Vict. c. 11, may be questioned. Besides, the great facilities which a judgment debtor possesses of disposing of his property, or mortgaging it to a stranger, who has no notice of such judgment, and who will not, unless compelled, incur the expence of searching the register, however trifling, makes it a matter of

some surprise that the legislature has not made it equally incumbent on such purchaser or mortgagee either to search the register, or to be affected by the judgments that may be properly entered. The 3 & 4 Vict. c. 82, has made the injustice to judgment creditors very apparent, by enacting that express notice shall not be available as against purchasers and others, if the incumbrance be not duly registered; whilst the 2 Vict. c. 11, enacts that although such judgment be registered, it must have no greater effect *without notice* than it had prior to the 1 & 2 Vict. c. 110. Why should this additional expence be imposed on a judgment creditor, if he is to be placed in no better situation than he was before? and especially when the cost of searching the register (now limited in all cases to five years) is so small. In a majority of cases it would be utterly impossible for a judgment creditor, however vigilant (when we consider the secret and expeditious manner in which property is conveyed) to ascertain who is the purchaser or mortgagee, so as to give him actual notice of his judgment. The right, therefore, of a purchaser without notice, being placed on the same footing as it was before the 1 & 2 Vict. c. 110, he may still protect himself against such judgment by getting in a prior legal estate where it was not held in trust for the seller. This single instance (although many might be adduced) will shew the powerful means which purchasers generally have of defeating judgment creditors of their claims, by the artifice of their debtors, who are, unfortunately, too much aided by the foregoing statutes.

With respect to *lis pendens*, the 7th section of 2 Vict. c. 11, enacts, "that no *lis pendens* shall bind a purchaser or mortgagee *without express notice thereof*, unless and until a memorandum or minute containing the name, &c., shall be left with the Senior Master of the Court of Common Pleas."

Will the introductory part of this section bear the construction that express notice of a *lis pendens* would bind a purchaser or mortgagee before it was registered? if not, what is the meaning of the words "*without express notice thereof*?" or would it be binding upon them only from the time of registering, whether they had notice or not, as the 3 & 4 Vict. c. 82, does not in express terms include *lis pendens*? Q.

MOOT POINTS.

DOWER OF EQUITY OF REDEMPTION.

IN 1837, *J. C.*, a devisee under the will of his uncle, mortgaged certain hereditaments to *E. B.*, for securing 3000*l.* and interest, and the deed was duly acknowledged by the wife of *J. C.*, and perfected with all the requisite solemnities for barring her claim to dower in the property.

J. C. has recently sold the property, and the mortgagee is of course willing to join in the conveyance, but the purchaser's solicitor re-

quires in addition that the conveyance should be acknowledged by the wife of *J. C.*, conceiving that as she was married since the passing of the late act relating to dower, she would become entitled under that part of the statute which renders widows dowerable out of estates, whether legal or equitable, provided they are equal to estates of inheritance in possession; and it certainly cannot be denied that an equity of redemption is an estate which may well come under that definition.

But it is conceived, on the other hand, that as the mortgage to *E. B.* in 1837, was duly acknowledged by *Mrs. C.*, and her claim to dower out of the estate effectually barred, there will be no necessity for any further acknowledgment, the legal estate being taken from the mortgagee, and the joining of *J. C.* operating merely as a release or confirmation. If any of the readers of the *Legal Observer* would be kind enough to suggest something which would satisfactorily set at rest the above point, they would confer an obligation on

A. M. C.

THE ATTORNEY'S ANNUAL CERTIFICATE DUTY.

To the Editor of the Legal Observer.

IMPRESSED equally as yourself and correspondents with the injustice and invidiousness of that professional poll-tax, known by the gentle and patronizing title of the Certificate Duty, my present purpose, nevertheless, is not to fill your pages with a discussion of the grievance; I shall consider it as indisputable, and content myself by calling upon the profession, at a season so appropriate, to exert themselves in effecting its abolition.

A correspondent (at p 379) urges us to press for relief on the contemplated revision of the Stamp Act; to me, however, a more suitable occasion seems to offer on the passing of the bill brought into the House of Lords by the Master of the Rolls, for "the Consolidation and Amendment of the Laws relating to Attorneys." I beg, therefore, through your columns, respectfully to call his Lordship's attention to the subject, and to request his aid and influence in protecting the humbler, though important class of his profession, from so unjust and unequally pressing an impost. Burthened with this annual charge on our income, and its vexatious consequences,—heavily taxed as we already are by stamps and fees on articles and admissions—and considering the late reductions of our gains, and the *history* of the imposition of this duty itself,—we surely present a strong claim for relief, and not the less so for having borne it so patiently thus long.

If the profession would only bring to bear upon its own grievances the same exertion and determination with which they so successfully redress the wrongs of their clients, I am sure even the Chancellor of the Exchequer would be convinced of the injustice of retaining us

longer on his budget list, but the rather gladly make up the deficiency by substituting peace for the "farthing" poll-tax on railway travelling. *A propos*, his eye, it is rumoured, is just now, indeed, directed to that very fund proposed, one so appropriate for revenue purposes—a source I verily believe to be created expressly for the service and exigencies of a great nation, saddled with a great debt. Be that, however, as it may, I seriously, and with all respect, beg to present the above suggestions to the consideration of his Honor, and to submit to the profession the propriety of waiting upon him, either through their influential organ, "the Law Society," or by deputation from their general body, with a petition praying the abolition of this oppressive tax.

Wolverhampton.

ONE, &c.

Sir,

I have seen in the "*Legal Observer*," for several weeks past, letters from various persons on the subject of the Attorney's Annual Certificate Tax, wherein they strenuously urge the necessity of agitation for the purpose of obtaining its removal; and I have seen that you advocate the measure, although your magazine has been uniformly devoted to promote those measures only which conduce to the dignity and welfare of the profession. I am somewhat astonished at this, and I beg to address your correspondents in a few words on the subject. It is, as it seems to me, exceedingly unworthy of the high character which lawyers bear, to make so great a stir on such a matter—something avaricious in thus endeavouring to use the power undoubtedly possessed by them, to exempt themselves from a fair and just share of the imposts that fall on all professions and trades.

Your correspondents urge that they are taxed by this duty in a manner in which no other calling participates. This is not true; nearly every business pays for a *licence*, and I presume the certificate of an attorney is to be considered his licence. The payments for licence in many inns amount to upwards of 20*l.* per annum, and a large house is necessary, which brings with it many other taxes in the shape of window-lights, &c., and their carriages and horses are all heavily burdened. So, bankers, jewellers, druggists, auctioneers, and others, all pay for their respective callings.

Now mark the attorney: he has a small quiet office, requiring but a small rent, very little capital, and one annual tax of 12*l.* or 8*l.* per annum, as the case may be; his education finished, and himself admitted (none of your correspondents object to these expenses), and what large returns he has for small investments? If a man's business does not enable him to pay without discontent 12*l.* per annum, let him leave it for something more profitable, but do not let him make his brother solicitors blush for the profession to which they belong.

A. P.

SELECTIONS FROM CORRESPONDENCE.

LEASE AND RELEASE ACT.

Mr. Editor,
Your correspondent R. B., of August 21, appears correct in his desire to see a uniformity of practice on this point. In the first conveyance I prepared, with reference to this act, I introduced the new matter immediately before the parcels. Thus (in his actual possession now being by virtue and in pursuance of an act passed, &c., intituled, &c., and by virtue of the statute of uses,) considering that the act and stamp, were merely substituted for the bargain and sale for a year, and that if previously it were necessary to refer to the statute of uses, the same necessity still appeared; but I soon afterwards observed a conveyance prepared by a town conveyancer commencing, "this indenture (being intended to be a deed or instrument of release, made in pursuance of an act, &c.) made the day of 1841, wherein there was not any further reference to the act, nor any reference to the statute of uses, but this I transposed, by first inserting the dates of the deed, as the date is the part we generally first look for. Perhaps something to the effect of the form I first adopted, would be calculated to satisfy the requirements of R. B., with regard to the various parts and purposes of a deed, which he very justly observes upon. But how is uniformity to be obtained? I can only suggest that the town conveyancers be requested to meet, and settle the matter for us, and inform you the result.

T. W.

RULE TO PLEAD.

In the case supposed by T., which appeared in No. 647 of the Legal Observer, it has been decided to be no irregularity. The case is, *Aikman v. Conway*, 6 Dowl. 76, and which applied precisely to this point. Baron Alderson there said, "that when two or more acts were done on the same day, the Court will presume that act to have been done first which ought to have been so done," thereby deciding, that the rule to plead may be entered before the notice of declaration is served.

W.

STAMPS ON MORTGAGE DEEDS.

Where money is lent on the security of mortgagor's life-estate and policies of insurance, I have understood there is some doubt among professional men whether it is strictly necessary to limit the amount which the mortgagee may be willing to advance, over and above the sum lent, in the shape of premiums, if necessary, to keep alive the policies, and also that it is not quite settled, what would be deemed a proper stamp under such circumstances. I should be glad if any of your readers could give me some information, as to what is now usually considered the safer course in such a proceeding.

P. P.

RE-ENTRY, ON FORFEITURE OF LEASE, BY CONSTABLE.

I lately met with a lease authorizing the lessor to re-enter on breach of covenant, *with the aid of a constable or police officer*. It seems to me somewhat problematical, whether it would be prudent on a breach, so to enter and forcibly eject the lessee; and yet he has authorized it by the terms of the lease. If any case has occurred on such a power, I shall be glad to be informed of it.

CIVIS A.

SUPERIOR COURTS.

Lord Chancellor's Court.

WILL.—ANNUITIES.

*A testator gave an annuity of 600*l.* to his wife for life, and after her death to be divided among six children named, and the survivors: Held, (reversing a decree of the Vice Chancellor) that this was not a gift of so much of the fund as would produce 600*l.* a year, but a gift of an annuity limited to the life of the survivor of the children.*

Mr. E. Blewitt, by his will, dated in 1830, gave an annuity of 600*l.* per annum to his wife for her life, and directed that after her death, the annuity should be equally divided between his children Anne, Thomas, Henry, Georgiana, Byron, and Oscar, or the survivors or survivor. The testator also gave to each of his said children 100*l.* per annum during their lives, to be paid quarterly, with power to leave their respective annuities at their deaths to any person they might respectively marry, or any child or children they might leave; but in case of any of them dying without having exercised such power, then the testator directed that the annuity of such child should go to the survivors or survivor. The testator also gave to each of the said children, when they should have respectively attained the age of twenty one years, or before, if the trustees should think fit, the sum of 400*l.* to put them out in life, or, if they died before such application of the said legacy, and before attaining the said age, he gave the same to the survivors or survivor. And the testator gave the residue of his estate and effects to his son Edmund, if he should survive him, the testator, but if not, he gave the same to his son R. J. Blewitt. The testator died in 1832, leaving his son Edmund, Rachel Blewitt, his widow, and his said other children, Anne, Thomas, Henry, Georgiana, Byron, and Oscar, surviving. Henry died in 1837, under twenty-one years of age, and without having received any part of the legacy of 400*l.* In the same year, Anne intermarried with the defendant Stauffers. In 1838, the testator's widow died, and his said son Oscar also died, without having received any part of the legacy of 400*l.* The bill was filed for the administration of the estate. The cause came on for further directions before the *Vice Chancellor*,

and the questions were, first, of the duration of the annuities; and secondly, of the title of the survivors of the sons, or of the representatives of those who were dead, to the interest of the latter under the will. The *Vice Chancellor* held that such of the persons named as were living at the death of the widow, were entitled in equal shares to the corpus of the fund which produced the annuity, and also that the annuities of 100*l.* each to the seven children were gifts of the corpus of the fund sufficient to produce these annuities, and that the survivors took as joint-tenants the shares of those who died without exercising the power. And, so also, as to the legacies of 400*l.* The plaintiff appealed from his Honour's decree, and the questions were argued by several counsel. The points of these arguments, and the cases cited, are stated in the following judgment.

The *Lord Chancellor*, having taken time to consider the case, gave his judgment as follows:—The first gift is 600*l.* per annum to the testator's wife for her life, and after her death, the said annuity to be equally divided between the six persons named, or the survivors or survivor of them. The *Vice Chancellor* has decided that the six persons are entitled, after the death of the widow, to so much three per cent. as would produce 600*l.* per annum. His Honour is made thus to express himself:—"I have always thought that if there be a gift simply of 100*l.* a year to *A.*, it is a gift of a sum which shall be sufficient to produce 100*l.* a year." The cases that were referred to in the argument before me, do not appear to support that proposition. In the case of *Clough v. Wynne*,^a the gift was of the interest of the residue to *A.* for her life, and at *A.*'s death to *C.*, and Sir *Thomas Plumer* held, that in default of words of limitation as to the last gift, the residue passed absolutely to *C.*, subject to *A.*'s life interest. In *Stretch v. Watkins*,^b there was an unlimited gift of the interest of stock. A very different principle applies to that case; an unlimited gift of the produce of the stock necessarily exhausts the whole subject matter. In *Phillips v. Chamberlain*,^c Lord *Alvanley* thought the terms used in the residuary clause were sufficient to carry the principal as well as the interest. In *Rawlings v. Jennings*,^d Sir *William Grant* relied upon the expressions, seeing from them that the intention was to give the capital. These decisions are all founded upon the general principle. Where the gift amounts to the gift of the fund itself, and where it is clear that the gift of the produce of the fund is without limit as to the time, it is impossible not to adopt the conclusion that it is given absolutely; but if the expressions are limited as to time, such limit must be the measure of the gift. There is a marked distinction between that and a simple gift; where the produce of a fund without limit had been given, that annuity must be appropriated. A gift of an annuity may be for any period of years, but in the ordinary accep-

tation of the term. If it should be said that the testator had given a positive annuity of 100*l.* a-year, there is no doubt of that gift being an annuity to the donee for life; it is a gift of a sum of 100*l.* that is, as many 100*l.* as the donee should live years. In *Savery v. Dyer*,^e Lord *Hardwicke* says, if one gives by a will an annuity not existing before to *A.*, *A.* shall have it only for life. In that case, the gift was during the life of *A.* And the question was, whether the annuity had ceased or was in operation during the life of *B.* It is singular that no other case has been referred to in which the question distinctly arises. But in *Innes v. Mitchell*,^f there is such a decision by Sir *William Grant*, by whom the annuity there given was held to be for life only, although there were provisions more strongly leading to an inference, that the capital was intended to be given, such as the direction for investing the 5,000*l.*—a gift not dissimilar to the present, and that very able and eminent judge, held that the annuity determined with the life of the survivor of the donees. If the gift of an annuity of 100*l.* to *A.* is a clear gift of that sum, it is a gift of a sum sufficient to produce the 100*l.* a year. There was sufficient in that case of *Innes v. Mitchell*, to give to the mother and her children, such a sum sufficient to produce the 200*l.* a year, without reference to the provision, as to the sum of 5,000*l.*; and yet notwithstanding that provision, it was held there was no gift of that sum of money. If a testator was minded to give 10,000*l.*, can it be supposed that he would set about his object, by giving 500*l.* a year to the legatee, without mention of the 10,000*l.* to carry into effect the annuity of 500*l.* by raising 10,000*l.* out of the estate, which would probably be very far from the intention of the testator? I feel no disposition to question the doctrine laid down by Lord *Hardwicke*, and followed by Lord *Eldon*, in the cases that have been referred to, and if I did, I should not (if I thought myself at liberty) depart from the rules established by such decisions. The petition of the plaintiff contains a claim on the part of the residuary legatee, to the annuity given to Henry Blewitt, who died in the life-time of the tenant for life; but it appears to me, the five survivors are entitled to the whole 600*l.* per annum as tenants in common for their lives. The gift is to the mother for life, and after her death, to the children, equally to be divided between them, or the survivors or the survivor of them. The subject matter of the gift, is an annuity of 600*l.* and the period of division was the death of the mother; and at that time there were but five children living. The same result attaches to the sum given to Henry Blewitt. For these reasons, it appears to me, that the *Vice Chancellor's* decision must be reversed, and there will be a declaration to that effect. The appellant is to have the costs of the appeal, and his deposit returned to him.

Blewitt v. Roberts and *Blewitt v. Stauffer*,^g Lincoln's Inn, Aug. 4, 1841.

^a 2 Madd. 188.

^c 4 Ves. 51.

^b 1 Madd. 253.

^d 13 Ves. 39.

^e Ambler 139.

^f 6 Ves. 461.

Vice Chancellor's Court.

PRACTICE.—SUPPLYING OMISSION IN DECREE.—45TH OF ORDERS OF 1828.

Where there is an evident omission in a decree, the Court will supply the defect by an independent order, although the motion for the purpose may be opposed, provided the addition sought to be made is consequential on the directions contained in the decree.

The 45th Order of 1828, applies only to cases where an order is required to be altered, and not where a substantial order is applied for.

A decree in this suit, which was instituted for the purpose of obtaining an account from a mortgagee, was made in 1832, when a reference was ordered to the Master to take the account. On proceedings before the Master, the defendant was advised to examine the plaintiff upon interrogatories, but upon carrying in draft interrogatories for that purpose, it was objected, on the part of the plaintiff, that the decree did not contain directions for examining the parties, which proved to be the case. The defendant in consequence now moved for an order supplemental to the decree, to enable him to proceed with his interrogatories, giving the usual directions to the Master to examine the parties on oath, if he should think fit; and he also moved, in order to save time, that the matter should be proceeded with before the Vacation Master.

Stuart and Parry, in support of the motion, said the object of the application was to enable the parties to carry into effect the decree, which was manifestly imperfect in its present state, and would be completely useless, unless the order now sought were made. An omission in a decree was always supplied on motion where the omission was clearly owing to mistake. *Wallis v. Thomas*, 7 Ves. 292; *Lane v. Hobbs*, 12 Ves. 458. As the matter had been so long pending, it was desirable that the interrogatories should be settled by the Vacation Master, by which much time would be saved.

Bruce and Chandless, *contrà*, urged that it was contrary to the practice of the Court to make such an order, for the Court never allowed any substantial addition to be made to a decree, except by consent. *Willis v. Parkinson*, 3 Swanst. 233; and if it were to be considered as a technical error, then under the 45th of the Orders of 1828, the application should have been by petition. There were no sufficient grounds, after so long a lapse of time since the decree, for referring the matter to the Vacation Master, to whom the matter would be entirely new.

Stuart, in reply.—The defendant's application was for an independent order, supplemental to the decree, and was not therefore affected either by *Willis v. Parkinson*, or the 45th Order.

The Vice Chancellor said, that in *Willis v. Parkinson*, Lord Eldon refused the order, because the addition required to be made was

not consequential on the directions already given, evidently therefore implying that if they had been consequential, the order might have been made without consent. The 45th order only applies to cases where the application was to have an order altered, but not as in this case to an application for a substantial order. There was some question as to who should pay the costs of the motion, but he thought that the party who complained of the omission ought to pay the costs of rectifying it. He should, therefore, make the usual order for the Master to be at liberty to examine the parties on interrogatories, but he did not think it was a sufficient case of pressure to require its being sent to the Vacation Master.

Jones v. Creswick, August 9th, 1841.

VOLUNTARY SETTLEMENT,—INJUNCTION.

An injunction will not be granted to restrain the settlor in a voluntary settlement from conveying freehold property, part of the property settled to purchaser subsequent to the date of the settlement, the statute 27 Eliz. c. 4, declaring such conveyances void as against purchasers. Secus as to personally.

The defendant Barlow, having by deed conveyed a certain freehold farm, and also assigned certain farming stock to trustees, upon trust for himself for life, and after his death, for his wife for life, with remainder to their child, subsequently entered into a contract for sale of the estate, and the plaintiffs as *cestui que trusts* in the settlement, now moved for an injunction to restrain him from completing such sale, and from parting with the title-deeds belonging to the estate. Barlow had also filed a bill, to have the settlement set aside on the ground of fraud, and had moved for an injunction to restrain the trustees from interfering under it, but that motion had not been proceeded with, in consequence of an arrangement between the parties for the appointment of a receiver.

Girdlestone and Jeremy, for the plaintiffs, urged that the settlement having been executed, there was no power in the defendant to revoke it. The principle was well established, that where no act was wanting on the part of a person making or directing a declaration of trust in favour of another, the trust was executed, and the person for whose benefit the trust was created was entitled to have it performed. Here the deed had been duly executed, and nothing was required to render the trust complete. It had been expressly determined, that where property so settled had been disposed of by the settlor, the Court would compel him to give security for the amount realized, and where was the distinction between compelling a man to give security for the produce of property so settled after he has received it, and restraining him from receiving at all? [*Vice Chancellor*.—If the property is freehold, the stat. 27 Eliz. c. 4, makes the settlement void as against purchasers]. The question was, whether the transaction was complete, for if

it were complete by actual conveyance, there was no difference between real and personal estate. The property also having been sold, was converted into personalty, *Petre v. Espinasse*, 2 Myl. and K. 496; *Gudenall v. Webb*, 2 Keen, 99; *Wheatley v. —*, 1 Keen, 551; *Fortescue v. Barnett*, 3 Myl. and K. 36.

K. Bruce, for the defendant, stated, that it had been decided in *Pulbertoft v. Pulbertoft*, 18 Ves. 84, and numerous other cases, that a voluntary settlement of land could not be supported against a subsequent purchaser for valuable consideration. It was true the settlement in this case included personalty; and if that had formed part of the subject of the application, there might have been grounds for an order, but the notice of motion was confined to the freehold part of the property, and with regard to that, the rule was too well settled to admit of dispute.

The *Vice Chancellor* said, the case was clearly within the statute, for if the Court could interfere to prevent the purchase money from being paid, there could be no purchase. Injunction refused with costs.

Gibson v. Barrow, July 17, 1841.

Queen's Bench.

[Before the four Judges.]

POWER OF JUSTICES.—COSTS.

The power possessed by the justices at the Quarter Sessions, under the 5 & 6 W. 4, c. 50, to award costs on an appeal, cannot be assumed by individual justices, and, therefore, if the Sessions declare that costs shall be paid, but omit to specify the amount, the justices who are entitled afterwards to issue a warrant to enforce the order of Sessions cannot insert the amount, and if they do, their warrant will be illegal.

This was an action for entering the plaintiff's house, and taking his goods. The defendants pleaded not guilty. At the trial of the cause before Mr. Baron *Alderson*, at the Summer Assizes for Berkshire, in 1839, it appeared that the plaintiff had applied to two magistrates, under the 5 & 6 W. 4, c. 50, s. 84, to stop up a certain footway in East Ilsley as useless. The magistrates made the order on his application. An appeal was entered against this order, and was heard at the Quarter Sessions at Abingdon, in July, 1838, when the footpath was found not to be useless, and judgment was entered for the applicant, and the respondent (the present plaintiff) was ordered to pay the costs of the appeal. By a mistake in drawing up the order of Sessions, the respondent's name was omitted, and no amount of costs was declared. The appellant, however, afterwards went before the two defendants, who, adopting as their authority the order made in the first instance on the hearing of the appeal for the payment of costs, took on themselves to settle the amount, and granted a warrant to levy on the respondent's goods, the sum of 112*l*. It was for the granting of this warrant, which was afterwards executed, that the present action

was brought; the plaintiff contending that the justices who issued the warrant had acted without authority, the first order being invalid, for not having declared the amount of the costs. The jury returned a verdict for the plaintiff. A rule had since been obtained to set aside this verdict, and have a new trial, on the ground that the facts stated formed a sufficient defence for the justices. The case was argued in the course of the last term, and the Court took time to consider the judgment, which was now delivered by

Lord *Denman*, C. J.—There had been a conviction for stopping up a highway, and there had been an appeal and a judgment for the appellant, and an order for costs, and a warrant issued thereon. The question, which related to the mode adopted for enforcing payment of these costs, arose on the 5 & 6 W. 4, c. 50. The 90th section of that act declares that the Court of Quarter Sessions shall award such costs as shall be incurred in prosecuting or resisting the appeal, and that such costs shall be recoverable as penalties are recoverable under the act. The 103d section shews how penalties are to be recovered; viz., on application to be made to two justices, who may issue their warrant for the purpose. But the objection to the proceeding here, is, that the order of the Court of Quarter Sessions was defective, in not fixing the amount of the costs to be paid, and that the two justices had no right to supply this deficiency, and issue their warrant on their own adjudication as to the amount of the costs, and the *King v. Shinn*,^a and *Ex parte Holloway*,^b were referred to, as shewing that a power possessed by the Quarter Sessions could not be delegated to or assumed by individual justices. We think that that proposition is fully established by those cases, that the insertion of the amount of the costs by the justices was therefore without authority, and, consequently, that the warrant issued by them was bad. The rule for a new trial must be discharged.

Selwood v. Mount and Bunney, Esquire, Q. B. T. T. 1841.

Queen's Bench Practice Court.

REFERENCE TO ARBITRATION.—SEVERAL ISSUES.—AWARD.—CERTAINTY.

A cause, in which several issues were raised, was referred to an arbitrator, who awarded a general verdict for the defendant, without any specific finding on each issue: Held bad for uncertainty.

This was an action of assumpsit to recover the amount of a reward, alleged to have been offered to any person who should give the first information of the parties guilty of a certain felony. The defendant pleaded *non assumpsit*; secondly, that the plaintiff did not give the first information; lastly, payment of 5*l*. in satisfaction. On these pleas issue was joined,

^a 1 Bott. (4th edit.) p. 470, pl. 587.

^b 1 Dowl. P. C. 26.

and the cause was then referred to an arbitrator, the costs of the cause and of the award to abide the event. The award was subsequently made, directing a general verdict for the defendant, and finding that the plaintiff had no cause of action. A rule *nisi* was subsequently obtained to set aside this award, on two grounds: first, that the award was not final, as there was no finding on the second and last issues; and secondly, that the award did not contain any event by which the costs of the second and last issues could be ascertained.

Cause was now shewn, and it was contended that there was nothing in the authorities to shew that it was indispensably necessary for the arbitrator to make an award upon each issue, provided his intention was sufficiently clear from the general language of the award. *Hunt v. Hunt*, 5 Dowl. P. C. 442. In the present case there was no affidavit that the arbitrator had been called upon to decide upon the various issues, and his intention was so clear as to leave no doubt or uncertainty upon the question of who was the substantially successful party. The rule had been obtained apparently under the rule of H. T., 1 W. 4, s. 74, (1 Dowl. P. C., 193.) which provided that the plaintiff in any action should not be allowed any costs upon any counts or issues on which he had not succeeded; and that the costs of all issues found for the defendant should be deducted from the plaintiff's costs. The case of *Dibben v. The Marquis of Anglesea*, 10 Bing. 568, seemed to be decisive upon this case. There the plaintiff brought an action of trespass, to which the defendant pleaded the general issue, and several pleas of justification. The cause was referred, the costs to abide the event, and the arbitrator found in favour of the defendant on the general issue, and disposed of the rights contested in the pleas of justification, but did not in his award decide upon the issues raised on them, and the Court of Exchequer refused to set the award aside. The judgment of Lord Lyndhurst there, seemed to favour the view, that the plaintiff if he had desired a special finding on all the issues, should have requested the arbitrator to make his award, so as to dispose of them separately. *Duckworth v. Harrison*, 4 M. & W. 432, confirmed the decision in that case, and although its authority had been in some degree questioned in *Giborne v. Hart*, 7 Dowl. P. C. 402; S. C. 5 M. & W. 57, it was to be observed that *Duckworth v. Harrison* was not there referred to. There were two cases of *Re Leeming and Fernley*, 5 B. & Ad. 403; and *Norris v. Daniel*, 10 Bing. 507, which appeared to support the views of the plaintiff in this case, but it was to be observed that both those decisions had been given prior to the case of *Dibben v. The Marquis of Anglesea*. The Court, at all events, even if it should be of opinion that the last named decision could not be sustained, would not altogether set aside the award, but would so frame their rule as to secure substantial justice to the parties, without involving the necessity of a fresh inquiry into the whole case.

In support of the rule, it was urged that the

R. G. H. T., 1 W. 4, was decisive upon the point, for that as the award now stood, the parties could not proceed to the taxation of costs. The authorities which had been referred to, were equally decisive as to the plaintiff's right to succeed in this application. The only decisions at all opposed to the motion were *Dibben v. The Marquis of Anglesea*, and *Duckworth v. Harrison*. The latter, however, had proceeded directly upon the authority of the former, which had been much doubted by the profession, and by the Court of Exchequer in the case of *Giborne v. Hart*. The general principle which was contended for, appeared indeed to be established, and had been assented to in *Hunt v. Hunt*, but that principle did not extend to this case.

Cur. adv. vult.

Coleridge, J., subsequently delivered the judgment of the Court. Having stated the facts as they appeared upon the argument, he proceeded to say, that upon the award the defendant was entitled to the general costs of the action, but that the difficulty arose upon the objection raised by the plaintiff, that there being no specific finding on the second and last issues, it was impossible to ascertain what the taxation should be. He had examined the cases attentively, and that which was most relied on in behalf of the defendant was *Dibben v. The Marquis of Anglesea*. There it was decided by the Court of Exchequer, that where a finding on specific issues was important only with respect to the question of costs, an award ought not to be set aside for the omission of the arbitrator to find each issue separately, unless he had been requested to do so. This decision, however, he believed had never been entirely approved of by the profession. *Duckworth v. Harrison* had proceeded upon that case, and although a different result might have been expected from the observations thrown out during the argument, Lord Abinger, in delivering judgment, after having taken time to consider the question, said "that if the parties had intended that the arbitrator should award distinctly upon each issue, they ought to have stated it." That was laid down without any reservation, and although that decision supported *Dibben v. The Marquis of Anglesea*, it was to be observed, that that case was distinguishable from the present, because there nothing was said in the submission to reference with regard to the costs of the action, which were here to abide the event of the award. In *Giborne v. Hart*, great doubt appeared to have been thrown on *Dibben v. The Marquis of Anglesea*. There, by the order of reference the costs of the suit were to abide the event, and the objection to the award was, that there was an omission to find upon the count, on an account stated, and the award was held to be bad, for not disposing of all the issues; but *Duckworth v. Harrison* was not there cited. The Court, however, could not acquiesce in the reason on which *Dibben v. The Marquis of Anglesea* was decided, for although he agreed that as to mere matters of fact, of which the arbitrator could of his own knowledge know nothing, an omission to give a decision was no

fault of his, yet where the agreement or order of reference placed the very point in view, it appeared to him that neither notice nor request was necessary to make it his duty to decide on it. The state of the authorities left him at liberty to decide on principle, and he should, therefore, on the ground alleged, hold the award to be defective. But he was not called upon, therefore, to set the whole award aside. The rule pointed to the second and last issues; and if the defendant would allow the costs on those issues to be taxed for the plaintiff, the objection would be removed. A similar course was taken in the case of *Re Leeming and Fernley*, and upon those terms, and the payment of the costs of this rule, the rule might be discharged.

Ingham, in support of the rule.

Martin, for the defendant.

Rule discharged.—*England v. Davison*, T. 1841. Q. B. P. C.

SECURITY FOR COSTS.

The Court will not, where the plaintiff is a private soldier in the service of the East India Company, compel him to give security for costs, notwithstanding the custom of that Company to require their soldiers to enlist for life.

This was an application made on behalf of the defendant, calling upon the plaintiff to shew cause why he should not give security for costs. It appeared that he was a private soldier in the service of the East India Company, and was in India; and in support of the motion it was sworn, that soldiers in his situation were required to enlist for life, and that they were not permitted to return to England until they were discharged.

Cause was now shewn by *Fitzjames*, who urged that the absence of the plaintiff from this country not being strictly voluntary, the case came within the principle of several decided cases, where the Court had refused to grant such an application. In *O'Laurel v. Macdonald*, 8 Taun. 706, a similar motion was made with respect to a British officer serving abroad, under a foreign power, but was refused. So also in *Lord Nugent v. Harcourt*, 2 D. P. C. 578, the Court refused to compel a commissioner of the Ionian Islands, filling his office abroad, to give security. And in *Ewing v. Chiffenden*, 7 D. P. C. 536, a similar decision was come to with regard to a lieutenant in the navy, filling the office of port captain and harbour master at Barbadoes. *Henschen v. Garves*, 2 H. Bl. 383, was also referred to.

For the defendant, it was contended by *Knales*, that these authorities were inapplicable to this case; for there was in every one of them some reason to suppose that the plaintiff would sooner or later return within the jurisdiction—a feature which did not here present itself.

Coleridge, J.—The Court ought not to extend the limits within which parties had been held liable to give security for costs. It was practically immaterial whether the absence of

the plaintiff was for ten, twelve, or fourteen years, or for life; and it was known that the Queen's regiments usually went abroad for a period of fourteen years. The distinction which might be attempted to be drawn, that the plaintiff was not in the Queen's service could not prevail; for, as the Indian army was well known to be under the command of the Queen's officers, to adopt such a distinction would be to fritter away the rule which had been adopted. As to the voluntary or involuntary absence of the plaintiff, the same decision must be given; for if he was involuntarily abroad, it would be hard indeed to deprive him of his right to bring his action without giving security. The rule must be discharged, but without costs.

Rule discharged, without costs. (*Vide Behn v. Sissions*, 2 D. P. C. 710.)

Garwood v. Bradburn, T. T. 1841. Q. B. P. C.

THE EDITOR'S LETTER BOX.

A correspondent states that he was article to an attorney, and assigned—serving under the articles two years, and under the assignment one year; then a year with another solicitor, but not assigned to him. It is clear, as suggested, that there must be an assignment for the residue of the five years, and a new contract for such further period as will enable him to swear that he served five years. Such an instrument will be effectual on a 35s. stamp. There are frequent instances of this kind. The supposition that another stamp of 120s. will be requisite, is a mistake.

Our short correspondent reminds us of our omitting to notice the inconvenient height of the desks, &c. in the Queen's Bench and Exchequer Rule Offices; and he thinks that at this season of the year the grievance complained of might, perhaps, be removed.

A correspondent expresses his surprise in reading the decision of *Ex parte Watkins*, p. 352, *ante*, where the Court of Queen's Bench considered the affidavit made by an attorney for the purpose of his being struck off the roll must be stamped; and he says that since the 4 & 5 Vict. c. 34, the affidavit need not bear a stamp. The case referred to by our correspondent was decided in Trinity Term, before the passing of that act, which did not receive the Royal Assent until the 21st June. See p. 197, *ante*.

We presume that a warrant of attorney, executed on plain paper, will not be stamped on application within twenty-one days, like an agreement, without assigning a reason by affidavit why the same was executed without a stamp.

The information for the *Legal Almanac* has been received from Yorkshire.

The letters of L. S. D.; "A Country Articled Clerk;" A. B.; "Lex.;" and several "Subscribers," shall be attended to.

A Correspondent at Liverpool is informed that the Index to the first Twenty Volumes of this work, was published some time ago.

The Legal Observer.

SATURDAY, SEPTEMBER 25, 1841.

— “ Quod magis ad nos
Pertinet, et necire malum est, agitamus.

HORAT.

CHARGES BY ECCLESIASTICAL PERSONS.

By the Common Law an ecclesiastical person, after being inducted into his benefice, was considered as being seised in fee. Bishops and deans, and such other sole ecclesiastical corporations as are seised of the fee-simple of lands in their corporate right, might, with the concurrence and confirmation of such persons as the law requires, have made leases for years or for life; estates in tail, or estates in fee, without any limitation or controul; and corporations aggregate might have made what estates they pleased, without the confirmation of any person whatsoever. These extensive powers have been restrained by various statutes, chiefly passed in the reigns of Henry the Eighth and Elizabeth, usually called the Enabling and Disabling Statutes, and of which an account may readily be found in any of the text-books on the Law of Property. These statutes regulate chiefly the leases that may and may not be granted by ecclesiastical persons; but the chargings of benefices are provided for by stat. 13 Eliz. c. 20, by which it is enacted that “all chargings of such benefices with cure hereafter with any pension, or with any profit out of the same to be yielded or taken, hereafter to be made, other than rents to be reserved upon leases hereafter to be made according to the meaning of this act, shall be utterly void.” This statute was repealed by stat. 43 Geo. III. c. 84, s. 10, which was afterwards repealed by the 57 Geo. III. c. 99, which had the effect of reviving so much of the stat.

of 13 Eliz. c. 20, as related to charging of benefices.^a The law therefore now is, that a clergyman cannot charge a benefice with cure of souls, and any security which has this effect is void.

But a living with cure of souls may be sequestered, and the profits taken by a creditor. In respect to his general liability to pay his debts, a clergyman does not stand on a different footing from any other person; and if he gives a warrant of attorney (and *à fortiori*, if a judgment is obtained against him), if there be nothing on the face of it to shew that it was given with the intention of charging his benefice, it must be dealt with as if the person giving it were a layman, and the same effect must follow. Where, however, on the face of the warrant of attorney, it appears that it was given as a collateral security for the purpose of securing the payment of a direct charge on the living, it will be void.^b

In *Colebrook v. Layton*,^c an annuity was secured by a clergyman upon his benefice in the usual manner, and a bond and warrant of attorney were given as collateral securities. The bond, after reciting the transaction, was conditioned to be void on due payment of the annuity on certain days. The warrant of attorney merely authorized judgment on the bond, describing it as a bond of even date with the warrant of attorney, executed by the grantor, and given to the grantees; and the defeazance recited that the warrant of attorney was

^a *Shaw v. Prichard*, 10 B. & C. 241.

^b *Flight v. Sulter*, 1 Barn. & Adol. 673. *In re Newland*, 9 Bing. 113.

^c 4 B. & Adol. 578.

given to secure the payment of an annuity of the amount mentioned in the bond, and payable on the days there mentioned. The Court refused to set aside a judgment on this warrant of attorney, on the ground that the reference in the warrant of attorney to the bond amounted to no more than a description of the bond, its date, parties, and term at which the annuity was to be paid, and did not incorporate the terms of the deed of grant (recited in the bond) with the warrant of attorney, so as to make the latter operate as a charge on the benefice.

This doctrine has been established by a variety of subsequent decisions,^d and in one of the latest of them,^e the Court, acting on this principle, on a proceeding under the Interpleader Act, 1 & 2 W. IV. c. 58, s. 6, at the instance of a sequestrator, to settle the right of several sequestration creditors of a beneficed clergyman, one of whom claimed under a warrant of attorney, which, by a memorandum indorsed upon it, appeared to be given by the clergyman for the purpose of securing an annuity granted by deed, refused to order the production of the deed in order to prove that it was free from objection under the statute of Elizabeth, the warrant of attorney being on the face of it regular. It would seem, in one case, that the Court intimated a strong opinion that even if the deed were void, as contemplating a charge upon the benefice, yet the covenant to pay the annuity, which is ordinarily inserted in the deed, might nevertheless be valid, upon the principle that such a deed, though void as a charge upon an ecclesiastical benefice is good, as the grant of an annuity.^f

Thus far as to charges upon benefices with cure of souls. Benefices without cure are unaffected by the statute of Elizabeth, and stand on different grounds. The point has recently been much discussed, both at common law and equity, in the case of *Grenfell v. The Dean and Canons of Windsor*,^g and in the case of *Doe d. Butcher v. Musgrave*,^h both of which cases involved a charge on a canonry of Windsor. The circumstances were shortly these:—The Rev. R. A. Musgrave was appointed by letters patent one of the prebends or canons of the chapel of St. George, at Windsor, which produced an income of 1200*l.* a-year.

Being in want of money, he granted to the plaintiff the said prebend or canonry, and all the annual income thereof, to secure the repayment of the sum of 12,000*l.* There did not appear to be any spiritual duties attached to the office, nor any cure of souls; but the answer represented that the corporation was governed by certain statutes and ordinances, whereby certain duties were imposed upon the members of the said corporation, to be by them performed, each member having the privilege of residing in a house within the walls of the Castle of Windsor, and if any member of the corporation failed to perform his duties, he forfeited his right to share in the division of the surplus income of the corporation, and in lieu thereof was entitled to receive a stipend of 25*l.* a-year only; and that one of the duties was to reside in one of the said houses within the walls of the Castle of Windsor, and to attend divine service in the chapel of St. George twenty-one days in each year. The right to assign the canonry being one of the points involved in the case, Lord Langdale, M. R., thus addressed himself to it:—"In the next place, it is said that he has no right to assign this canonry, because the share of the revenues was given to him in consideration of certain future duties to be performed. Now if it had been made out that the duty to be performed by him was a public duty, or in any way connected with the public service, I should have thought it right to attend very seriously to that argument, because there are various cases in which public duties are concerned, in which it may be against public policy that the income arising for the performance of those duties should be assigned; and for this simple reason, because the public is interested, not only in the performance from time to time of the duties, but also in the fit state of preparation of the party having to perform them. Such is the reason in the cases of half-pay, where there is a sort of retainer, and where the payments which are made to officers from time to time, are the means by which they, being liable to be called into public service, are enabled to keep themselves in a state of preparation for performing their duties. If, therefore, they are permitted to deprive themselves of their half-pay, they might be rendered unable promptly to enter upon their duties when called upon, and the public service would be thereby greatly injured. So also, where a pension or remuneration is given for a purpose which tends less directly to the public benefit, as, for

^d *Moore v. Ramsden*, 3 Nev. & P. 180. *Saltmarsh v. Hewitt*, 1 Adol. & El. 812.

^e *Johnson v. Brazier*, 1 Adol. & El. 624.

^f *Gibbons v. Hooper*, 2 B. & Adol. 738; 1 Atk. on Convey. 324.

^g 2 Beav. 544.

^h 1 Scott, N. S. 451; 1 M. & G. 335.

instance, was the case in *Davis v. The Duke of Marlborough*, 1 Swanst. 79; there the pension was given to the Duke of Marlborough as a memento of the gratitude of the nation, and as a reward for his distinguished public services; and it was there the intention of the legislature that it should be kept in mind that it was for those great services it was given. In that case the pension was held inalienable, because it was considered that one of the objects of giving the pension, namely, for having a perpetual memorial of national gratitude for public services would be entirely lost; and so in the course of that case Lord *Eldon* said, in the way of illustration, and in allusion to the pension of a great public officer, that it could not be aliened, because that public officer must not be allowed to fall into such a situation as to make it difficult for him, in consequence of any pecuniary embarrassment, to maintain the dignity of his office. With respect to the case of *Cowper v. Reilly*, 2 Sim. 560, and 1 Russ. & Myl. 560, some doubts have been expressed as to the propriety of the decision on the motion for a receiver; but the question was, whether the salary was assignable on the grounds of public policy, and that depended on the nature of the duty, and the interest of the public to secure the payment of the salary to the person by whom the duty was to be performed. If, in this case, the residence in Windsor Castle and the attendance on divine service, had been stated in the answer, or in any way shown to be for the benefit of the public, or for the maintenance of the dignity of the Sovereign for the benefit of the public, I should have thought the case worthy of a very different consideration. But from all that is stated in this answer that is not the case; it is a service to be performed for the benefit of the party himself; and therefore, upon the case as it now stands upon this answer, and without saying there may not be other facts which may be material to be ultimately considered, it appears to me that the security of the plaintiffs is valid, and I must therefore refuse the motion with costs."^h

The other point discussed in the case was as to the residence of Mr. Musgrave. "It cannot be supposed," said Lord *Langdale*, "that Mr. Musgrave will be so unwise as, rather than give the plaintiffs the benefit of that which they are clearly entitled to, wholly to neglect to perform the duty which entitles him to the receipt of

this income, and thus leave the debt standing, and the interest accumulating upon it. I cannot presume that any such degree of absurdity will mark his future conduct." However, it is to be observed, that the fact that all property of this nature may be rendered valueless by non-residence, renders it very insecure.

Mr. Musgrave also borrowed money by way of mortgage from another party, who brought an action of ejectment, in order to obtain possession of the canonry; but it was decided by the Court of Common Pleas, that an action of ejectment would not lie for the canonry in question, it being a mere office of which the sheriff could not give possession, and that ejectment did not lie for the residentiary house in which the canon resided, as it appeared vested in the corporation, and not in the Crown.¹

THE CERTIFICATE DUTY.

WE have now for many years contended that the annual payment demanded from attorneys for a certificate is an unjust imposition, and as we thought that this was an opinion very generally entertained, we have contented ourselves with expressing it, and with requiring the repeal of the tax, without giving our reason. But as we see that one correspondant seems to think that we are pursuing an unworthy course, in pressing on the legislature that one part of the profession should be relieved from this tax; and as the present seems to be a fitting occasion for stating the case, we shall go into it a little more at length.

We say, then, that this certificate duty is unfair and unjust, because it is levied on no other honourable profession as a body. Hawkers and pedlars pay for an annual license, so do vendors of liquors, and pawn-brokers do the like—game cannot be sold without a licence; but we know of no other instance in which the diffusion of knowledge is thus annually taxed. The clergyman may preach few or many sermons without any inquiry from the state; the physician may have one ghost at his door or one thousand, without being called on to regorge his fees; the surgeon cuts off limbs; the apothecary deals out his drugs unmolested by the tax-gatherer. Nay, the other branches of the law are untaxed—the barrister is not obliged, before receiving perhaps his only guinea, to see whether he has paid twelve times as much for his right

^h *Grenfell v. The Dean and Canons of Windsor*, 2 Bea. 544.

¹ *Doe d. Butcher v. Musgrave*, 1 Scott N. S. 451; 1 M. & G. 335.

to sign his name. He perhaps pays something to the society of which he is a member, but this is not strictly necessary; and he can take his revenge, if he pleases, in tough mutton and new port wine. The attorney, then, is the only man among the higher professional grades who pays any tax for the bare exercise of his profession. The architect does not pay anything; the painter does not pay anything; the surveyor does not pay anything. The persons immediately above the attorney and below him in professional rank are exempt. He alone is selected. And why! Is there any reason? Unless a good one can be given—and really we cannot imagine one—is there not somewhat of a stigma in being thus singled out? We wish, then, to get rid of this tax. As the representatives of all branches of the profession, we object to this unfair impost pressing on one. If it be proper to tax the diffusion of legal knowledge, we cannot see why one branch alone who dispense it should be pounced upon. Why should not the judge pay it? Why should not the barrister pay it? But it is altogether unfair to mulct the legal profession any more than any other profession. Why should not the medical man pay—why should not the clergy pay a certificate tax? We do not see exactly that they stand on grounds so widely different as make out for them an exemption.

But then, it is said, that the attorneys are so well paid that they can afford this tax. Are they, then, so very well paid? If we have an income tax, we should like to know how many of them will say that they receive 1000*l.* a-year? We will venture to say that the profits of the profession are by no means so enormous as some are apt to suppose. Of an attorney's bill, when what is paid to others, stamps, law officers, sinecurists, interest for money, and other disbursements are deducted, very little, we rather think, finds its way into the pocket of the attorney. Where, however, a business is once established, and there are certain regular incomings, the outgoing of the certificate duty may not be much felt; but where a business has to be formed—where a beginning has to be made, this tax is grievous indeed. However enormous the profits of the attorney may be, in order to make them the clients must be secured; but when the clients are uncertain and the expenses are sure; when the outlay must be provided for and the return is not quite clear, then it is that the payment of this tax is often very distressing. Let any of our

readers who are not thus burthened, recall his feelings when he has paid his tax for his dog, his horse, or his carriage, which he might, if he pleased, have avoided altogether, and then he may form some estimate of the peculiar pleasure which attends the extraction of what *must be paid, or a sentence of self-disqualification be signed.*

Unjust and oppressive as this tax is, we are, however, not very sanguine of its being, at least at present, removed. But this is not to prevent our declaring it to be unjust and oppressive on any fitting occasion, and shewing that though it may be extorted by might, its imposition cannot be defended on principle, or in justice; and we cannot conclude these observations without urging the oppressed branch to persevere in their exertions, and the other branches of the profession to assist in removing what now forms an invidious distinction.

We insert the following letter on this subject from a correspondent:

To the Editor of the Legal Observer.

Sir,

I HAVE just read the letter in support of the certificate duty, signed A. P., in the *Legal Observer* of the 18th September. In one point I agree with the writer; I do think that the assertion he reprobates, *viz.* "that attorneys are the only persons who are taxed for an annual licence to practise," is not true, and have been frequently surprised to meet with it in letters you receive from those who justly enough in general, complain of this most unfair and oppressive tax.

But I can go no further with A. P. The question is, not whether trades and other professions do not pay for a licence, but whether situated as attorneys now are, *they* ought to pay for it. "Mark the attorney, (says A. P.) he has a small quiet office, requiring a small rent." The rent, I fear, will be found an addition to the rent of his dwelling, and in many cases it is not very small. As to the "little capital" required, is it possible that A. P. can be a solicitor? Perhaps, as he thinks but little capital is required, he may also be of opinion that *little credit* is called for.

He says none of your correspondents object to the hundreds an attorney has to expend before he needs a certificate. I think he has misunderstood them. These heavy expenses, which, it may be said, no trade or other profession has to pay, furnish *one* good reason why attorneys should *not* pay for a certificate.

When Mr. Pitt introduced the 11*th*. (now 12*th*.) duty on articles, he gave as a reason that the *profits* of the profession could pay it, and the additions made since as to admission, &c., were all founded on the same supposition. I do not believe that any trade or profession can claim, as a matter of right, that its profits

should not be diminished by the legislature; but when the legislature takes money from any trade, business, or profession, on the ground that their profits will pay for it, the country has thereby made with these professors a *contract*, not so legal indeed, but full as equitable as the contract with the fundholder; and if, afterwards, the legislature finds it convenient to diminish those profits, it is as much bound to make compensation to the parties injured, as it is to pay the fundholder his

It is idle to say how are we to compensate so large a body, and how to find a scale for compensation? The answer is, you must do *justice*, be the trouble and expence what it may. Look for a moment at the agents whose business must be reduced one half, by the new County Court Act. I do not say this is a bad law. I think it good. I think the nation has a right to it, and to every other improvement; but then the nation must pay its debts. The slave-owners were compensated. Persons who hold offices and bought them, and whose purchase money was paid to individuals, and not to the State, receive compensation to the last man, and the last farthing; while an attorney, whose money was paid to his country, and to support the State, has no compensation. I wish, Mr. Editor, I could prevail on my professional brethren to listen to the voice of a very obscure and humble individual, and instead of asking for a mere repeal of the certificate duty, to demand of the honour and justice of the country, compensation as a *debt*, in addition to the repeal. I do not know that all attorneys have been injured by the late changes, and those in contemplation. *Some* certainly have and will be. I fear there are persons in the profession, who (secure themselves) care nothing for others, and I have actually been told by respectable solicitors, that so far from wishing to see the certificate duty abolished, they would be glad to see it raised to 40*l.* per annum, in order to get rid of great numbers of the profession, which they consider overstocked.

A. P. does not state whether he is an attorney or not. At first, I thought he was, but on reconsidering his letter, I entertain some doubts as to that point. Does he know how many attorneys there are who can barely live and support their families, where they happen to have them? I know how it is with some, and it is a fact that though there are many splendid exceptions, the greater part of the London attorneys are actually struggling for an honourable livelihood, and these are the persons who have a right to call for a repeal of the duty. It is to them a very great object. If the country had not taken their money, a question might have been raised as to whether other professions might not be equally distressed, and how far they were entitled to a repeal of the duty, on the ground of their own necessities; but the legislature having imposed the tax on articles and admissions, &c., and subsequently diminished the profits of the profession, are bound to take off the certificate duty, unless they intend that the country should be guilty of a breach of faith.

P. A.

LAW OF EVIDENCE.

SIMILITUDE OF HAND-WRITING.

THE rules relating to the admission of evidence of hand-writing may be considered as generally well settled; but it may be useful to take a cursory review of the principal cases on the subject, part of the circumstances of which will be found to be somewhat curious.

It was ruled in *Algernon Sidney's case*, that similitude of hand, with other circumstances, was good evidence of his having written a paper charged against him as an overt act of treason. 2 Hawk. P. C. c. 46, s. 15; 3 State Trials, 802. It appears that three witnesses were called, to prove a paper to be Sidney's hand-writing: the first said he had seen the prisoner write the indorsement upon several bills of exchange, and that he believed the paper produced, to have been written by him. The next witness said he had not seen the prisoner write more than once, but that he had seen his indorsement on bills, and that the paper was very like it. The last witness said he had seen several notes which had come to him with the indorsement of the prisoner's name, and that he had paid them, and had never been called to account for mispayment. The whole of this evidence was received.

The prisoner, in his defence, insisted that nothing but the comparison of hand-writing had been offered as proof against him. He was, however, convicted. The legislature, on the reversal of the attainder, declared that comparison of hands is no evidence of a man's hand-writing in criminal cases, and it seems to have been generally holden, since that time, that it is not evidence in any criminal case, whether capital or not capital. 1 W. & M. c. 7 (private). The act recites that there had not been sufficient legal evidence of any treasons committed by Sydney, there being produced a paper, found in his closet, supposed to be his hand-writing, which was not proved by any one witness to have been written by him, but the jury were directed to believe it "*by comparing it with other writings of his.*"

According to the report, however, the first witness had seen the prisoner write his name several times, but though the case, therefore, does not warrant the conclusion to which Parliament came, the declaration in the act constitutes a sufficient authority, for the doctrine ever since held against the admission of evidence merely on a comparison of hand-writing.

In the case of *Rex v. Cator*, 4 Esp. N. P.

145, two persons were called, who, having looked at the libels in question, spoke without any doubt of their being the hand-writing of the party accused. As far as that went, the Court held there was no objection to the evidence; but then an inspector of franks was called from the Post Office, and the libels were put into his hands; he had not seen the party write, and was called to speak as a man of science to an abstract question. He was shewn the papers, and desired to look at them, and without enquiring who wrote them, or for what purpose, he was asked "From your knowledge of hand-writing in general, do you believe that writing to be a natural or fictitious hand?" His science, his knowledge, his habit, all entitled him to say, I am confident it is a feigned hand. To that the Court held there was no objection; and so far as that went, there was no reason for rejecting that evidence.

Then came the next and important point. It was said to him—"Now look at this paper, and tell me whether the same hand wrote both?" The witness said "I never saw him write in my life. I collect all my knowledge of his being the author of this paper, by comparing the same hand with that which other witnesses have proved to be a natural hand: by looking at the two, I draw my conclusion." The Court held this to be directly and completely a comparison of hand, and rejected the evidence.

In *Eagleton v. Kingston*, 8 Ves. 175, Lord Eldon states the law very clearly. "When I first came into the profession, the rule as to hand-writing in Westminster Hall in all the Courts was this: you called a witness, and asked whether he had ever seen the party write. If he said he had, whether more or less frequently, if ever, that was enough to introduce the subsequent question, whether he believed the paper to be his hand-writing. If he answered, that he believed it to be so, that was evidence to go to the jury. If he refused to answer to his belief, he was pressed, perhaps too much, to form a belief; but if he would not go the length of belief, his evidence went for nothing. Or you might ask a witness, who had not seen him write for a length of time, if you could not get a witness of a subsequent date. You might call one, who had not seen him write for twenty years; and if he said he believed it was the hand-writing of the person, that evidence might go to the jury; but to be affected by all the rest of the evidence, as it is the nature of all evidence to be more or less convincing. In *Horne Tooke's case*,

at the Old Bailey, his hand was proved only by *Woodfall*, who had not seen him write for a great length of time. But that went only to the character of the evidence. This rule was laid down with so much clearness, that till very lately, I never heard of evidence in Westminster Hall of comparison of hand-writing by those, who had never seen the party write; though such evidence has been frequently received in the Ecclesiastical Court."

And his Lordship added:—"A singular circumstance applicable to this point, happened to me. A deed was tried in Westminster Hall, stated to have been executed under circumstances, throwing a good deal of blot upon the persons who had obtained it. The solicitor, who was a very respectable man, said, he felt satisfaction, that there were respectable witnesses. One was the town clerk of Newcastle, and I was the other. I (said Lord Eldon) could undertake to a certainty, that the signature was not mine, having never attested a deed in my life. He looked back to my pleadings, and was sure it was my signature, and if I had been dead, would have sworn to it conscientiously. Suppose I had been out of the kingdom, and had come into Westminster Hall during the trial, and had positively sworn, that I never attested a deed in my life, would it not have been competent to the jury or the witness to say, that it was a mistake? That instance proves, that testimony of hand-writing must be open to the consideration of circumstances at common law."

See also, the case of *Wade v. Broughier*, 3 Ves. & B. 172.

PARLIAMENTARY NOTICES.

SIR EDWARD SUGDEN.

Sir Edward Sugden, with great talents and character, and with a sincere desire (as we believe) to do right, has the art of putting himself constantly in the wrong. It was stated in the House of Commons, by Sir Robert Peel, that he had been appointed Lord Chancellor of Ireland; and yet, nearly a week after, he comes down to the House and takes his seat on the Treasury Bench as if nothing had happened. Now we are quite sure he did not intend to do anything wrong by this, nevertheless, to say the least, it was not in good taste. It may be quite true, that legally he was not in possession of the office; but no one knows better than himself, that what is intended to be done, is, in equity,

considered as done, and that his presence in the House, without expressing his dissent from the previous statement of Sir Robert Peel, virtually ratified his appointment, and that the mere ceremony of kissing hands was not necessary to disqualify him from continuing to hold his seat.

CHANCERY BILL.

By a technical blunder the Chancery Bill has had to begin afresh in the House of Commons; but there seems no reason to doubt its passing in the present Session unaltered. Rumour is busy as to the new Judges, and we have heard several names mentioned; but it is useless giving currency to what is at present of no value whatever. We believe, however, that they will be selected from the leaders of the Chancery Bar. We understand that two new Courts will be forthwith built for the accommodation of the new Judges.

CONSOLIDATION AND AMENDMENT OF THE LAW OF ATTORNEYS.

[Continued from p. 408.]

We stated in our last number (p. 408 *ante*), the effect of the proposed alterations in the law, so far as relates to the *qualification* of attorneys, their articles, service, examination, admission, &c. We proceed now to notice the other alterations.

As to the *Restrictions on Practitioners*.

1. The former enactments, which limited applications to twelve months, for striking attorneys off the roll for defect of service is now amended by adding a proviso against fraud. 2. Attorneys in prison were re-

stricted from prosecuting actions: they are now to be restrained from prosecuting or *defending* actions. 3. By the former acts attorneys were liable to pecuniary penalties for allowing unqualified persons to practise in their names. Such mal-practice is now to be deemed a contempt of Court in both parties, and punishable accordingly (by fine and imprisonment).

As to the Law of Costs :

1. After the expiration of a month from the delivery of the bill, a taxation is to be ordered on such conditions as the judge may direct. 2. The certificate of taxation is to be final, and judgment entered. 3. A taxation may also take place of bills which have been paid, provided the application be made within twelve months. 4. Attorneys and solicitors are to be at liberty to take security for future costs, not only from their clients, but third persons; thus abrogating the law of maintenance. 5. On the other hand, the Courts, in their discretion, may direct costs to be set off between the parties, notwithstanding the lien of the attorney.

In the *exceptions* to the operation of the act, provision is made for persons whose periods of service have expired before the passing of the act, and for government solicitors, clerks in court, &c. The present practitioners in the county palatine Courts are also excepted; but the future attorneys of these Courts must be examined and admitted in the superior Courts.

An important authority is given to the judges to authorize attorneys and solicitors in London, as well as the country, to *Administer Oaths*.

The following are the schedules to the act:—

THE FIRST SCHEDULE

Containing a Description of the Acts and parts of Acts repealed by this Act.

Date of Act and Title.

Extent of Repeal.

15 Edw. 2, c. 1.—An act concerning the acknowledgment of fines and admitting attorneys.

So much as relates to regulating the admission of attorneys.

4 Hen. 4, c. 18.—An act for regulating attorneys.

The whole.

4 Hen. 4, c. 19.—An act for providing that no officer of a lord of a franchise shall be attorney within the same.

The whole.

1 Hen. 5, c. 4.—An act as to sheriffs, bailiffs, &c.

So much as provides that no undersheriff shall be attorney in the King's Courts, during the time he is in office.

18 Hen. 6, c. 9.—An act touching filing warrants of attorney.

The whole.

Date of Act, and Title.

- 33 Hen. 6, c. 7.—An act for regulating the number of attorneys in Norfolk, Suffolk, and Norwich.
- 32 Hen. 8, c. 30.—An act concerning mispleading jeofails and attorney.
- 18 Eliz. c. 14, s. 3.—An act for reformation of jeofails.
- 3 James 1, c. 7.—An act to reform the multitudes and misdemeanors of attorneys and solicitors at law, and to avoid unnecessary suits and charges in law.
- 4 & 5 Ann. c. 16.—An act for the amendment of the law, and the better advancement of justice.
- 2 Geo. 2, c. 23.—An act for the better regulation of attorneys and solicitors.
- 5 Geo. 2, c. 18.—An act for the further qualification of justices of the peace.
- 6 Geo. 2, c. 27.—An act to explain and amend an act made in the second year of his present Majesty's reign, intituled "An act for the better regulation of attorneys and solicitors."
- 12 Geo. 2, c. 13.—An act for continuing an act made in the eighth year of her late Majesty Queen Anne to regulate the price and assize of bread, and for continuing, explaining, and amending the act made in the second year of the reign of his present Majesty for the better regulation of attorneys and solicitors.
- 22 Geo. 2, c. 46.—An act to continue several laws for preventing exactions of the occupiers of locks and wears upon the river Thames westward, and for ascertaining the rates of water carriage upon the said river; and for continuing, explaining, and amending the several laws for the better regulation of attorneys and solicitors; and for the regulating the price and assize of bread; and for preventing the spreading of the distemper amongst horned cattle; and also for making further regulations with respect to attorneys and solicitors, and further preventing the spreading of the distemper amongst horned cattle; and for the more frequent return of writs in the counties palatine of Chester and Lancaster; and for ascertaining the method of levying writs of execution against the inhabitants of hundreds; and for allowing Quakers to make affirmations where an oath is or shall be required.
- 23 Geo. 2, c. 26.—An act to continue several laws for the better regulation of pilots, for the conducting of ships and vessels from Dover, Deal, and Isle of Thanet, up the River Thames and Medway, and for permitting rum and spirits of the British sugar plantations to be landed before the duties of excise are paid thereon, and to continue and amend an act for the preventing frauds in the admeasurement of coals in the city and liberty of Westminster, and several parishes near unto, and to continue several laws for preventing exactions of occupiers of locks and wears upon the river Thames, westward, and for ascertaining the rates of water carriage upon the said river, and for the better regulating and government of seamen in the merchant service; and also to amend so much of an act made in the first year of the reign of king George the First, as relates to the better preservation of salmon in the river Ribble; and to regulate fees in trials at assizes in nisi prius upon records issuing out of the office of Pleas of the Court of Exchequer; and for the apprehending of persons in any county or place upon warrants granted by justices of the peace in any county or place; and to repeal so much of an act made in the twelfth year of the reign of king Charles the Second, as relates to the time during which the office of the excise is to be kept open each day, and to appoint for how long time the same shall be kept open upon each day for the future, and to prevent the stealing and destroying of turnips; and to amend an act made in the second year of his present Majesty, for the better regulation of attorneys and solicitors.

Extent of Repeal.

- The whole.
- So much as relates to entering warrants of attorney.
- So much as relates to filing warrants of attorney.
- The whole.
- So much as relates to filing warrants of attorney.
- The whole.
- So much as excludes attorneys and solicitors from acting as justices of the peace.
- The whole.
- So much as relates to attorneys and solicitors.
- So much as relates to attorneys and solicitors.
- So much as relates to attorneys and solicitors.

Date of Act, and Title.

30 Geo. 2, c. 3.—An act for granting an aid to his Majesty by a land-tax.

30 Geo. 3, c. 19.—An act for granting to his Majesty several rates and duties upon indentures, leases, bonds, and other deeds, and upon newspapers, advertisements, and almanacks, and upon licenses for retailing wine, and upon coals exported to foreign parts; and for applying from a certain time the sums of money arising from the surplus of the duties on licenses for retailing spirituous liquors; and for raising the sum of three millions by annuities to be charged on the said rates, duties, and sums of money; and for making perpetual an act made in the second year of the reign of his present Majesty, intituled “an act for the better regulation of attorneys and solicitors, and for enlarging the time for filing affidavits of the execution of contracts of clerks to attorneys and solicitors; and also the time for payment of the duties omitted to be paid for the indentures and contracts of clerks and apprentices.

34 Geo. 3, c. 14.—An act for granting to his Majesty certain stamp duties on indentures of clerkship to solicitors and attorneys in any of the courts of England therein mentioned.

37 Geo. 3, c. 90.—An act for granting to his Majesty certain stamp duties on the several matters therein mentioned, and for better securing the duties on certificates to be taken out by solicitors, attorneys, and others.

1 & 2 Geo. 4, c. 48.—An act to amend the several acts for the regulation of attorneys and solicitors.

3 Geo. 4, c. 16.—An act to amend an act made in the last session of parliament, for amending the several acts for the regulation of attorneys and solicitors.

1 & 2 W. 4, c. 56.—An act to establish a court of bankruptcy.

5 & 6 W. 4, c. 11.—An act to indemnify such persons in the United Kingdom, as have omitted to qualify themselves for office and employments, and for extending the time limited for those purposes respectively, until the 25th day of March, 1836; to permit such persons in Great Britain as have omitted to make and file affidavits of the execution of indentures of clerks to attorneys and solicitors, to make and file the same, on or before the first day of Hilary Term, 1836, and to allow persons to make and file such

Extent of Repeal.

So much as relates to an attorney or solicitor acting as commissioner of land-tax.

So much as enacts that the said act made in the second year of his said Majesty's reign, intituled “an act for the better regulation of attorneys and solicitors, should be continued and made perpetual.

So much as enacts that no person shall be admitted as an attorney or solicitor unless the indenture therein mentioned be inrolled with an affidavit, as therein mentioned, within six months; and so much as enacts that if any person not admitted as therein mentioned shall take any proceedings as therein mentioned, he shall forfeit 100*l*.

So much as renders every person admitted in any of the Courts therein mentioned or referred to, who shall neglect for one whole year to obtain such certificate as therein mentioned, incapable of practising; and directs that the admission of such person in any of the Courts shall be null and void.

The whole.

The whole.

So much as relates to the admission and practising of attorneys and solicitors in the said Court.

So much as relates to the service of any clerk, and his admission and inrolment as an attorney or solicitor, or as to striking any person off the roll.

Date of Act, and Title.

Extent of Repeal.

- affidavits, although the persons whom they served, shall have neglected to take out their annual certificates.
- 6 & 7 W. 4, c. 7.—An act to indemnify such persons in the United Kingdom, as have omitted to qualify themselves for offices and employments, and for extending the time limited for those purposes respectively, until the 25th day of March, 1837, to permit such persons in Great Britain, as have omitted to make and file affidavits of the execution of indentures of clerks to attorneys and solicitors to make and file the same on or before the first day of Hilary Term, 1837, and to allow persons to make and file such affidavits, although the persons whom they served shall have neglected to take out their annual certificates.
- 1 Vict. c. 16.—An act for amending the several acts for the regulation of attorneys and solicitors.
- 1 & 2 Vict. c. 45.—An act to extend the jurisdiction of the Superior Courts of Common Law, to amend chapter 56 of the first year of her present Majesty's reign, for regulating the admission of attorneys, and to provide for the taking of special bail in the absence of the judges.

So much as relates to striking any attorney or solicitor off the roll.

The whole.

So much as relates to the admission and practising of attorneys and solicitors.

THE SECOND SCHEDULE.

	£	s.	d.		£	s.	d.
On filing every affidavit of the due execution of articles of clerkship or assignment, and for entering such affidavit and making the indorsements required by the act.....	0	5	0	clerkship or assignment, to be produced to the Court or Judge on applying for admission	0	2	6
On leaving articles of clerkship and assignments for inspection and enquiry as to due service previous to examination	0	10	0	For the fiat for admission of the Master of the Rolls or a Judge	1	1	0
On the examination into the fitness and capacity of the clerk, and the certificate thereof	2	2	0	For the oath	0	1	0
For search for and delivery of the affidavit of the execution of articles of				On signing the roll	0	5	0
				For the certificate of inrolment	0	10	0
				For making and keeping an alphabetical roll or book of attorneys and solicitors, and entering an attorney or solicitor's annual declaration of his residence, and the Court and term of which he was admitted, and for a certificate thereof	0	2	6

POINTS IN COMMON LAW PRACTICE, BY QUESTION AND ANSWER.

No. IX.

ARBITRATIONS (see 396, ante).

156. On a reference to two or more arbitrators, the witnesses must be examined by all the arbitrators, unless there is an express authority for one arbitrator to proceed alone, or the parties consent thereto. *Lush's Prac.* 859.
157. An award will be set aside where one of the arbitrators, a merchant, left a question of law to be decided by his co-arbitrator, a lawyer, although both signed the award. *Id.*
158. If the submission empowers the arbitrators, in case of disagreement, to appoint an umpire, and they determine the appointment by lot, unless by the consent of the parties expressed beforehand, or by their assent afterwards, the appointment will be void. *Re Tunno*, 5 B. & Ad. 288; *Re Greenwood*. 1 P. & D. 461; *Re Hodson*, 1 W. W. & H. 540; *Jamieson v. Binns*, 4 Ad. & El. 445.
159. The arbitrator cannot proceed in the absence of either party, or his attorney, unless the submission empowers him so to do, and he should give both parties notice of the time and place at which he intends to proceed. *Anon.* 1 Salk. 71. But by the stat. 3 & 4 W. 4, c. 42, an arbitrator may proceed, in the absence of a party who has revoked; but notwithstanding such revocation, such party must have notice of the time and place of proceeding. *Re Kyle*, 2 Jur. 178.
160. In order to enforce the attendance of witnesses, the 3 & 4 W. 4, c. 42, s. 40, enacts that when any reference shall have been made, it shall be lawful for the Court, or for any Judge, by rule or order, to command the attendance and examination of any person to be named, or the production of any documents to be mentioned in such rule or order; and the disobedience to any such rule or order shall be deemed a contempt of Court, if in addition to the service of such rule or order, an appointment of the time and place of attendance, signed by one at least of the arbitrators, or by the umpire, shall be served either together with, or after the service of such rule or order: provided, that every person, whose attendance shall be so required, shall be entitled to the like conduct money, and payment of expenses and for loss of time, as for and upon attendance at any trial; provided also, that no person shall be compelled to produce,

under any such rule or order, any writing or other document that he would not be compelled to produce at a trial, or to attend at more than two consecutive days, to be named in such order.

161. The award must be made within the time limited by the submission, or the enlarged time, as the case may be. *M'Arthur v. Stocken*, 2 Bing. N. C. 651.
162. Any alteration made in an award, even to correct a mistake, (see *Ward v. Dean*, 3 B. & Ad. 243) will render it void.
163. Where the arbitrator has power to enlarge the time, he must exercise it before the time is out. In this, as in every other respect, the authority given must be strictly pursued. *Mason v. Wallis*, 10 B. & C. 107; *Reid v. Fryatt*, 1 M. & S. 1.
164. No particular form of words is necessary in enlarging the time. Where the arbitrator, having power himself to enlarge the time, instead of writing "I enlarge," &c. wrote a direction that a rule of Court should be applied for to enlarge till a given day, the Court held it sufficient. *Hullett v. Hullett*, 5 M. & W. 28.
165. The consent of the parties, whether expressed in words, or by their attendance, waives the want of a formal enlargement, and amount in effect to a new submission. *Benwell v. Hinzman*, 3 D. P. C. 500; *Leggett v. Finlay*, 6 Bing. 255; *Hallett v. Hallett*, 7 D. P. 399. So that the award afterwards made, will not be invalid on this account; but the Court will not enforce it by attachment in any case where it is not strictly in pursuance of the submission. *Read v. Dutton*, 2 M. & W. 69.
166. A party entitled to costs under an award cannot proceed to tax such costs, until after the time when a motion may be made to set aside the award. *Hobdell v. Miller*, 2 Scott, N. S. 163.
167. An arbitrator having awarded costs to be paid on a day prior to the time for applying to set aside the award, this was held not to be a good ground for impeaching the award. *Hobdell v. Miller*, 2 Scott, N. S. 165.
168. When the time for making an award is enlarged for three months from the date of the enlargement, the day on which the award was to be made, is not to be reckoned. *In re Higham and Jessop*, 9 Dowl. 203.
169. An officer of the Court may refuse to draw up a rule for an attachment for non-performance of an award, where the award is not properly stamped. *Hill v. Slocombe*, 9 Dowl. 339; 21 L. O. 287.
170. The certificate of an arbitrator appointed by an order of Nisi Prius is deemed of the same effect as an award, and cannot be set aside on the ground of a mistake on the effect of evidence. *Price v. Price*, 21 L. O. 223; 9 Dowl. 334.

SUPERIOR COURTS.

Rolls.

VENDOR AND PURCHASER.—SPECIFIC PERFORMANCE.—PARTIES TO CONVEYANCE.—ANNUITIES CHARGED ON LAND.

If where lands are devised, subject to a general charge for payment of debts, and also subject to annuities, a purchaser cannot require the concurrence of the annuitants, nor any release from them.

And if a purchaser insist upon such concurrence or release, his so doing will be deemed an objection to title, and not a question of conveyance. If a vendor reserve to himself the right of putting an end to the contract between him and a purchaser, if objections to the title are made and not removed within a certain time, he can avail himself of such condition, at the expiration of the time limited, by giving notice to the purchaser of his intention to put an end to the contract; but he must act bonâ fide.

The bill in this case, which was argued on the 12th and 13th of March last, was filed for the specific performance of a contract entered into by the defendant with the plaintiff, for the sale to him of an estate adjoining Richmond Park in Surrey, formerly belonging to the late Accountant General, the brother of the defendant, by whose will it was devised, together with the other property of the testator, to the defendant, subject to the debts of the testator, and also to certain legacies and annuities given by the will, of which the defendant was appointed sole executor. The estate was put up to sale by auction by the defendant, and purchased by the plaintiff, in the month of July, 1839, pursuant to certain conditions, of which the 5th and 6th were the only important ones with reference to the present questions. By the former of these it was stipulated, that all objections to the title should be taken by the purchaser within twenty-eight days after the delivery of the abstract; and if any such objections were made, and not removed within fourteen days after the expiration of the twenty-eight days, that then, or at any time thereafter, the vendor should be at liberty (by notice in writing to be delivered to the purchaser or his solicitor) to put an end to the contract, and in such case the vendor should, within one week after the delivery of such notice, repay to any purchaser his deposit money, with interest at the rate of 4 per cent. per annum, together with the auction duty paid by such purchaser, but without costs. And by the latter of such conditions, it was stipulated that the vendor should make and execute, and procure to be made and executed by all proper parties, all deeds of conveyance, surrenders, and other deeds which might be necessary or usual, for vesting the premises in any purchaser.

After the abstract was delivered, several requisitions were made upon the title by the plaintiff's solicitor, but they were all eventually satisfactorily answered except one, by which

the plaintiff's solicitor required that the annuitants, whose annuities were charged upon the testator's property, should either concur in the conveyance to the plaintiff, or release the estate from their annuities, the purchaser's solicitor contending, principally on the authority of Sir Edward Sugden, in his work of *Vendors and Purchasers*,^a that annuities must be considered as subsisting charges, and that lands devised, subject to them, would be liable to their payment in the hands of a purchaser, unless properly exonerated. The defendant refused to comply with this requisition, and gave notice to the plaintiff of his having annulled the contract, pursuant to the 5th condition, and tendered to the plaintiff the amount paid by him for deposit and interest, whereupon the plaintiff filed his present bill.

Pemberton, Turner, and S. Miller, for the plaintiff, contended that it was absolutely essential to the plaintiff's title that the annuitants should join in the conveyance or release, for although it might be conceded that where there was a general charge for payment of debts, and legacies were subsequently given, a purchaser was not bound to see to the application of his purchase money, yet with regard to annuities, the case was altogether different, for they were held to be continuing and subsisting charges. The principles upon which the distinction was founded were easily to be recognized, for a legatee might insist upon having his legacy paid or secured at the expiration of a twelve-month from the testator's death; but an annuitant had no such power, and, if the defendant's doctrine were supported, would be wholly at the mercy of the executor. It was frequently the practice for a man who was possessed of landed property, and had several daughters, to leave his estate to his son or sons, subject to annuities to the daughters; but if a general charge for payment of debts were sufficient to authorize an executor to sell at any time without reference to the annuities, any son who happened to be appointed executor, would have the power of totally destroying his sisters' fortunes. *Elliott v. Merryman*, Barnard, 78; *Bonney v. Ridgard*, 1 Cox, 145; *Shaw v. Borrer*, 1 Keen, 559; *Wynn v. Williams*, 5 Ves. 130; *Omerod v. Hardman*, 5 Ves. 722; Sugd. Vend. & Purch. 9th ed. v. 2, p. 39. It was not, however, necessary to enter into the general question, for the defendant by his answer had admitted that the estate was not sold for the payment of debts, and that all the debts of the testator had been duly paid, which was tantamount to an express notice to the purchaser of the annuities, being the only charges upon the property. *Johnson v. Kennett*, 6 Sim. 384, and 3 Myl. & K. 631; *Watkins v. Cheek*, 2 Sim. & St. 199; *Eland v. Eland*, 1 Beav. 235; *Prest. on Abstr.* v. 2, p. 220; *Co. Litt.* 290 (b); *Hargr.* n. s. 14. But even if the Court should be of opinion that the defendant was not bound to comply with the plaintiff's requisition, he could have no right to avail himself of that one-sided con-

dition, by which he sought to evade performance of the contract, for the Courts had of late discountenanced such unjust conditions, and would not allow advantage to be taken of them where objections were fairly taken, unless it could be shown that the vendor was unable to remove them. *Roberts v. Wyatt*, 2 Taunt. 263; *Rede v. Farr*, 6 M. & S. 121; *Rippinghall v. Lloyd*, 2 Nev. & M. 464; *Tanne v. Smith*, Jur. v. 4, p. 310; *Southby v. Hutton*, 2 Myl. & Cr. 207: and it was absolutely necessary for the protection of purchasers that the construction recognised in these cases should be supported, for otherwise a dishonest vendor might at any time for the purpose of making a better bargain, create difficulties for the purpose of evading performance of his contract. In *Hobson v. Bell*, and *Graham v. Oliver*, recently heard before his Lordship, a reference was ordered to the Master, to ascertain whether certain necessary parties would concur, and as the defendant stated by his answer, that he sold the property for the purpose of carrying into effect the trusts of the will, he might call upon the annuitants to concur. *Cowley v. Heartstonge*, 1 Dow. 378; *Costigan v. Hailer*, 2 Sch. & Lef. 160. The objection also did not fall within the fifth condition, the law being that if a vendor has a right to call upon another party to concur, the objection that that party does not concur, is simply a question of conveyance. *Mad. Ch. Pract.* 2d edit, p. 140; *Lewis v. Leatham*, 1 Mer. 179. As, however, the plaintiff was a willing purchaser and only required a good title, he would at once complete, if the Court should be of opinion that he might safely do so without the concurrence of the annuitants.

L. Wigram and Loch, for the defendant, contended that the effect of all the authorities was to prove that there was no distinction between legacies and annuities, and this was expressly stated by Lord Eldon in *Jenkins v. Hiles*, 6 Ves. 654, n. The strong argument against the claim made by the plaintiff, was that if annuities were to be considered as prior charges, so as to prevent an executor from selling, no sale of land charged with annuities could be completed, except through the intervention of a Court of Equity. The annuities in this case were to be considered as mere personal charges, for lands in the hands of a devisee for payment of debts, were assets in the hands of such devisee. *Messenger v. Andrick*, 4 Russ. 478; *Spuchman v. Turnbull*, 8 Sim. 253. The defendant had no power to require the annuitants to concur, and the purchaser could not call upon him for an indemnity, without an express stipulation for the purpose. *Aylett v. Ashton*, 1 Myl. & Cr. 105. It was clear that the debts of the testator were not all paid at the time the property was sold, and the defendant had therefore an undoubted right to sell.

With regard to the fifth condition, which had been so much complained of, it was framed for the express purpose of avoiding litigation, and when a purchaser comes to the Court to ask for the fulfilment of a contract, he must be

^a 9th edit. v. 2, p. 39.

bound by the conditions under which he purchased. *Eland v. Eland*, *supra*.

The Master of the Rolls, after referring to the fifth and sixth conditions of sale, to the requisitions on the title made by the plaintiff's solicitor, and to the defendant's notice for annulling the contract, thus continued:—The only question before the defendant's notice of annulling the contract, was, whether the concurrence of the annuitants, or the releases from them were necessary to give a safe title to the purchaser. The will of Mr. Adam charged the whole of his estate with the payment of his debts, and also with the payment of the annuities given by his will. It is said that if the will had charged the real estate with the payment of his debts and pecuniary legacies only, the purchaser would, in the absence of special circumstances, have been exonerated from any liability in respect of the application of the purchase money: but it is said, first, that there are special circumstances tending to shew that a sale of this estate was not required for the payment of the debts; and secondly, that annuity legacies are different from others, and being intended to continue a charge on the estate, the lands must be liable in the hands of a purchaser. I do not think that there are in this case any special circumstances to take the case out of the common rule. The rule as to the exoneration of a purchaser from the liability to look to the application of the purchase money, was stated by Lord Lyndhurst to be applicable to the state of things at the time of the testator's death, and in the particular arrangement made by the executor for the payment of the debts, the time at which they were to be paid, or the funds out of which they were to be paid in the first instance, do not appear to me to vary the effect of the rule. The question, therefore, is, whether the annuity legacies are subject to different considerations from mere pecuniary legacies. When an annuity is charged upon land, and there is no devise for the payment of debts, and no general charge of debts, it must be deemed that the land was intended to be a constant and subsisting security, or fund, for the payment of the annuity; but in the case of *Elliott v. Merriman*, *supra*, where an expression to that effect was used, it was not considered, and the case did not require it to be considered, whether in a case in which both debts and annuities were charged, the land would be charged for the payment of the annuities in the hands of a purchaser from the person whose duty it was to sell for the payment of debts; and the opinion of Lord Eldon, as stated in a note to *Jenkins v. Hiles*, *supra*, is, that where a man by will charges or orders an estate to be sold for the payment of debts generally, and then makes specific dispositions, the purchaser is not bound to see to the application of the purchase money. It is just the same as if the specific bequest was out of the will. Seeing no reason to dissent from that opinion, and conceiving that an annuity legacy charged on the estate is, in the sense here used, a specific disposition, subject to the payment of debts,

I do not think that the rule ought to be departed from by reason of the nature of the legacy. The reason upon which the rule is founded, operates precisely in the same manner whether the legacies are of annuities or of sums of money, and it would occasion very great inconvenience if no sale of estates for payment of debts charged thereon could take place without the authority of a Court of Equity, if the author of the charge for payment of debts had also charged the estate with the payment of legacies in the form of annuities. On the whole, therefore, it appears to me, that in order to ensure a good title, or to execute a valid conveyance, the defendant was under no obligation to procure the concurrence of, or obtain the release of the annuitants under the will of the testator, whose estate was the subject of sale, and it appearing to me that the defendant had done all that it was incumbent upon him to do for the purpose of shewing a good title, and that the plaintiff persevered in requiring something more which the defendant was not bound to do, I think that the defendant did not unreasonably avail himself of the means which the conditions afforded him of putting an end to the contract. I think that the question was, as it was treated by the parties, a question of title, and not a question of conveyance only: and I should have thought the notice to annul the contract invalid, if, in giving it, the defendant had sought improperly to escape from the performance of his duty, which, by the nature of the contract, he was bound to perform; but the case here is very different, being, as it appears to me, in fact, an attempt on the part of the purchaser to compel the defendant to do more than was required by his duty under the contract. As the defendant gave his notice to annul the contract, only because the plaintiff insisted on a release from the annuities, and as the plaintiff has at the bar expressed his desire to have a specific performance of the contract, even in the event of the question as to the annuities being determined against him, it may be that both parties may now be desirous that the purchase should be completed under the direction of the Court, and if they are, there can be no objection to giving directions for that purpose.

Page v. Adam.—July 30th, 1841.

[The principles established in this case will be found highly important, for his Lordship has determined, first, contrary to the opinion of Sir Edward Sugden, as expressed in the text of his work on Vendors and Purchasers, (although a doubt is suggested in a note to the last edition,) that there is no distinction between legacies and annuities charged on land, where there is a general charge for payment of debts; secondly, that where there is such a general charge, a purchaser is not bound to see to the application of his purchase money, even although he may have notice that all the debts are paid; and thirdly, that a requisition by a purchaser, under the circumstances stated in the above case, insisting upon the concurrence of annuitants having specific charges, is an objection to title.—Ed.]

MURCH'S BENCH.

[Before the four Judges.]

QUARTER SESSIONS.—JURISDICTION.

The 27th section of the 9 Geo. 4, c. 61, is not repealed by the 105th section of the 5 & 6 W. 4, c. 76, and, therefore, the appeal against the decision of Borough Justices in refusing a licence to sell spirits, &c., must still be made to the Quarter Sessions of the Borough, and not to the Recorder.

In this case a party had applied to the Justices of the Borough of Reading for a wine and spirit licence, which had been refused. He then appealed, not to the Recorder of the Borough, but to the Justices at the Quarter Sessions for the County. The Sessions decided the appeal, subject to a case for the opinion of this Court in which the question was raised, whether the 26th section of the 9 Geo. 4, c. 61,^a was repealed by the 5 & 6 W. 4, c. 76, s. 105.^b

Sir F. Pollock and Mr. Carrington contended that the 9 Geo. 4, c. 61, s. 27, had not been repealed by the 105th sec. of the Municipal Corporation Act

The Attorney General, Sir W. Follett, Mr. Tyrwhitt, and Mr. Bros, argued that it had, and that the only appeal now allowed was under the more recent statute.

Lord Denman, C. J.—The question in this case is, whether there is any power given to the Recorder of a Borough to hear appeals against the refusal of Borough Justices to grant licences within the Borough. I have heard the arguments to-day with some surprise, but without feeling any doubt on the question: for I think it is impossible that any legislative provision can be clearer than is that of the 9th George 4 on this subject—namely, that if the Borough Justices should refuse such license, the party aggrieved by such refusal may appeal to the Quar-

^a By which it is enacted, that “any person who shall think himself aggrieved by any act of any justice, done in or concerning the execution of this act, may appeal against such act to the next General or Quarter Sessions of the Peace, holden for the county or place wherein the cause of such complaint shall have arisen.”

^b By which it is enacted, that the Recorder of every Borough shall hold once in every quarter of a year, &c., a Court of Quarter Sessions of the peace in and for such Borough; and such Court shall be a Court of Record, and shall have cognizance of all crimes, offences, and matters whatsoever, cognizable by any Court of Quarter Sessions of the Peace for counties in England, and the said Recorder shall have power to do all things necessary for exercising such jurisdiction, notwithstanding his being such sole judge, as fully as any such last mentioned Court. Provided nevertheless, that no Recorder, by virtue of his office, shall have power to make or levy any county rate, or rate in the nature of a county rate, or to grant any licence or authority to any person to keep an inn, alehouse, or victualling house, to exciseable liquors by retail, &c.

ter Sessions of the adjoining county; the words of the sect. (his lordship read them) are so clear as not to admit of a question. A doubt might, perhaps, be raised on the earlier words of the sentence as to the nature of the grievance that would give a right of appeal; but when we find the refusal of a licence constantly spoken of in the 9th Geo. 4, as a matter to be determined by the discretion of the Justices, there seems to be no reasonable doubt on that point. At the time of the Municipal Act it appears to me clear that an appeal lay from the Borough to the County Justices, if the former refused a licence. Such, then, was the established practice at the time of the passing of the Municipal Reform Act. Then, did that act take away the power thus given to the justices in the Quarter Sessions of the county? The 103d & 105th sections of the Municipal Act are applicable to this point. Within those sections, the borough of Reading has had a grant of separate Quarter Sessions, and a Recorder has been appointed; and the section says, that in all such cases the Recorder shall hold a Court of Quarter Sessions, which shall be a Court of Record, and shall have cognizance of all such matters and things as are within the cognizance of any Court of Quarter Sessions of the Peace for a county. These words themselves would seem to give him the right to sit, like the Court of Quarter Sessions for the county, as a Court of Appeal from the decision of the Borough Justices; and this general power would apply in matters of refusing licences, and also in those relating to county rates. But lest he should exercise such power, it is distinctly declared that he shall not have power to levy any rate in the nature of a county rate, or to grant any licence or authority to any person to keep an inn, alehouse, or victualling house, or to sell exciseable liquors by retail, so that it is precisely the same thing as if this section had said to the Recorder, You may do all that the County Quarter Sessions may do, except make rates and grant licences. Now this exception clearly involves in it the power of reversing the refusal of licences by the Justices, a power clearly possessed by the Court of Quarter Sessions. To that extent the 9th of George 4, so far from being repealed by the Municipal Act, has been expressly kept alive. The question then is, whether this power of hearing appeals has been given to the Recorder by the effect of the 111th section. That section declares, that the justices of a county “in which any Borough is situated, to which his Majesty shall not have granted a separate Court of Quarter Sessions, shall exercise the jurisdiction of Justices of the Peace in and for such borough as fully as by law they can do in and for the county: and no part of any borough in and for which a separate Court of Quarter Sessions of the Peace shall be holden, shall be within the jurisdiction of the Justices of any county, from which such borough before the passing of this act was exempt,” which was certainly the case with the borough of Reading. These words are extremely large, and would prevent the County Justices acting within the borough in ordinary cases; but to such cases the provision must be

confined. The consequence is, that though the Justices of this Borough had the right to hear and determine on the application for the licence, the Justices of the Court of Quarter Sessions for the County had the right to determine, by way of appeal, whether a refusal to grant a licence had been properly made or not, and this power of deciding on such an appeal cannot be exercised by the Recorder.

Mr. Justice *Patteson*.—I am entirely of the same opinion. It seems to me that the 27th section of the 9th Geo. 4, is so clear that it is impossible to doubt upon it, or to agree with the Attorney-General in what he tries to persuade us, that the power of appeal on a refusal to grant a licence does not mean a refusal in the exercise of the discretion of the Court, but only a refusal to hear on some other ground. This is a restriction of the meaning of words, which seem to me quite plain in themselves, and I cannot, therefore, consent to adopt it. In case the act appealed against shall be a refusal to grant a licence, that must be a refusal in the exercise of the discretion of the justices. It follows, then, that before the passing of the Municipal Corporation Act, there lay an appeal to the Justices of the County in Quarter Sessions, and that must still be so now. As to the Municipal Corporation Act, I do not feel any doubt on the 105th section. The 111th seems to me to apply to a matter entirely different from the present. That act had destroyed Quarter Sessions in many Boroughs for ordinary purposes. Notwithstanding it had done so, and had limited their powers in others, it had not destroyed the powers which they possessed as Courts of Appeal in certain cases, where the decisions of justices were to be reconsidered. The Court of Quarter Sessions of the County have power in these cases as full as they might have in the business of the county; that is, they have jurisdiction in the Borough with the Borough Justices, notwithstanding the evidence of the Borough Court of Quarter Sessions. The granting of licences and the levying of rates are instances of this sort. The statute intended to supply the jurisdiction out of Sessions exercised by the justices by the creation of a Recorder. The Recorder is a Justice of the Peace, and as such might act in the first instance with other Justices in the matter of granting licences. But the Recorder would not have power to grant a licence by virtue of his office of Recorder alone. I was at first struck by another circumstance. The Recorder is prohibited from making a rate in the nature of a county rate, and yet there is an express appeal given to him from the decision of those who have the power to make a county rate, or something in the nature of a county rate. I therefore thought, that though he might not have an original, he might have an appellate jurisdiction in this matter. But that supposition is opposed to the 105th section, for that prohibits him from making a rate in the nature of a county rate, or from exercising in his office of Recorder any of the powers possessed by the Council of the Borough, of which the

making of a rate is clearly one. I am, therefore, of opinion that you cannot, in a case of this sort, appeal to the Recorder, but must appeal to the Quarter Sessions of the county.

Mr. Justice *Williams*.—There is no general right of appeal. That right altogether depends on the words of the statute. But for the 27th section of the 9th Geo. 4, the party would be without any appeal whatever. Then, as all the power of appealing originally depended on that section, is that power taken away, or at all affected by the words of the Municipal Act? I think it is not, it remains as before, and the decision of the appeal must, therefore, rest with the Justices in the Quarter Sessions of the county.

Mr. Justice *Coleridge* concurred.

The Queen v. Henry Deane and another, Justices of Reading. Q. B. F. J. T. T. 1841.

Queen's Bench Practice Court.

EJECTMENT.—STAY OF PROCEEDINGS.—LITIGATION OF TITLE.

A rule having been obtained for staying proceedings in an action of ejectment, until the costs of a former action of ejectment, and an action for mesne profits had been paid, on the ground that the same title was again in dispute: Held, that an affidavit sworn by the lessor of the plaintiff, stating that his claim was not founded on the same title, was a sufficient answer to the rule, without any specific allegation as to the title under which he claimed.

Prideaux moved for a rule, calling upon the lessor of the plaintiff to shew cause why the proceedings in this action of ejectment should not be stayed, until the costs of two former actions of ejectment, and of an action of trespass for mesne profits, should have been paid. A Mrs. Ayres, it appeared, had been in possession of certain property from the year 1815 down to 1840. In the latter year, Bennett, the present defendant, brought an action of ejectment to recover the premises, and, no one appearing to defend the suit, obtained judgment against the casual ejector. An action of trespass for mesne profits was then brought by Bennett against Mrs. Ayres, and the latter also brought an action of ejectment against Bennett, but pending the proceedings Mrs. Ayres died. The present action was subsequently commenced by the present lessors of the plaintiff to recover the same property, but it was now sworn that the claim was made by them as devisees under the will of Mrs. Ayres; and it was contended that as the same title was in dispute which had before been in question, the Court would grant the defendants that relief which they prayed.

Bere now shewed cause, and produced an affidavit in answer, in which it was sworn that the lessors of the plaintiff did not claim the property in question under the will of Mrs. Ayres, or in any way through Mrs. Ayres, but that the title under which they sought to recover was entirely different. This, it was contended, was a sufficient answer to this

motion, for if the title was not the same, the Court would not call upon the lessors of the plaintiff to pay the costs of former actions. The allegation that the title now sought to be established was different from that which had before been in dispute, was sufficiently made; and there was no necessity for the lessors of the plaintiff to go on to disclose the title which they now set up.

Prideaux, contra.—It was not enough that the lessors of the plaintiff should make the general statement which was contained in their affidavit, but they should have further stated the nature of the title under which they claimed.

Coleridge, J.—The allegation in the affidavit of the lessors of the plaintiff may be true or false, but it is a distinct answer to the present application, and I think that the lessors of the plaintiff are not bound to disclose their title on this rule.

Rule discharged, without costs.—*Doe, d. Bailey and another v. Bennett and Wife*, T. T. 1841. Q. B. P. C.

RULE TO COMPUTE ON MORTGAGE DEED.— DEATH OF MORTGAGEE.

Interlocutory judgment had been signed on the 17th April, in Easter Term; on the 20th the mortgagee died; in Trinity Term the Court refused to grant a rule to compute principal and interest on the mortgage.

This was an action on a mortgage deed. Interlocutory judgment was signed on the 17th April, in Easter Term, and on the 20th the mortgagee died. It was now sought to obtain a rule to compute principal and interest due to the mortgagee by the mortgagor.

Cleasby, in support of the motion, cited *Berger v. Green*, 1 Mau. & Sel. 229.

Wightman, J.—There is no relation now to any other day, except that on which final judgment is signed. Here, it would appear, that it was signed after the death of the plaintiff, if we were to grant this motion. Even according to the old practice, the judgment would only relate back to the first day of this term.

Rule refused.—*Pitt v. Parker*, T. T. 1841. Q. B. P. C.

TRIAL BEFORE SHERIFF.—NEW TRIAL BEFORE JUDGE.

A cause having been tried before the undersheriff, the Court will make it a term of a rule for a new trial, that it take place before a Judge of the Superior Court, without a fresh application being made for that purpose.

In this case a rule *nisi* for a new trial in a cause, which had been tried before the undersheriff, had been made absolute, when *M. D. Hill*, who had supported the rule, applied that it should be made one of its terms, that the new trial should be before a Judge of the

Superior Court, on the ground that many difficult points of law would arise.

Petersdorff, contra, urged that this must be the subject-matter of a fresh motion.

Coleridge, J.—I have before allowed this to be done, and I do not think that a fresh application is requisite.

Rule absolute.—*Moggridge v. Drew*, T. T. 1841.—Q. B. P. C.

LAW BILLS IN PARLIAMENT.

House of Lords.

For the amendment of the Bankrupt Law.

Lord Cottenham.

Bankruptcy, Lunacy, and Insolvency.

Lord Cottenham.

For authorizing the Transfer of certain Proceedings in Chancery, Bankruptcy, and Lunacy, to the County Courts.

Lord Cottenham.

[These Bills are withdrawn for the present Session.]

For consolidating and amending the Laws relating to Attorneys and Solicitors.

The Master of the Rolls.

For enabling Incumbents to grant Leases.

The Bishop of London.

For enabling Ecclesiastical Corporations to grant Leases.

The Bishop of London.

For the improvement of Boroughs.

Lord Normanby.

For regulating Buildings.

Lord Normanby.

For the improvement of Drainage.

Lord Normanby.

House of Commons.

For the better Administration of Justice in the House of Lords and the Privy Council.

Sir E. Sugden.

For a Committee to inquire into the operation of the Acts for suspending in certain Cases the Usury Laws.

Sir E. Sugden.

To amend the Law of Landlord and Tenant.

Mr. Sharman Crawford.

To continue the Poor Law Commission, until 31st July, 1842.

Sir R. Peel.

To continue such Laws as may expire before 1st January, until 31st July, 1842.

[In Committee.] Sir R. Peel.

To make further Provisions for the Administration of Justice.

[In Committee.]

The Attorney General.

THE EDITOR'S LETTER BOX.

The Form of Oath in the bill relating to Attorneys, (pointed out by "Lex") is the same as in the existing Statutes. This bill, we believe, will not be proceeded with until February next; and there will, therefore, be abundant time to make suggestions for the consideration of the Master of the Rolls.

The letters of "A Member of the Law Society," and "Civis, A.," shall be inserted at the earliest opportunity.

The communications of "One, &c.," G. M. I.: and "Lector," have just been received.

* *Vide Blackburn v. Goodrick*, 9 Dowl. P. C. 37.

The Legal Observer.

MONTHLY RECORD FOR SEPTEMBER, 1841.

———“Quod magis ad nos
Pertinet, et nescire malum est, agitamus.”

HORAT.

SECOND REPORT ON THE PUBLIC RECORDS.

THE Deputy Record Keeper, Sir F. Palgrave, acting under the directions of the Master of the Rolls, pursuant to the 1 & 2 Vict. c. 94, has just made his Second Report. It is a very able and elaborate document. It contains an account of the proceedings relating to the taking possession of the records for the purposes of the Act, with general observations and suggestions. We shall extract some statements relating to the Records of the Courts of Law and Equity.

First, as to the *compactness and regularity of records*.—"I humbly show to your Majesty, that, in considering the plans which may hereafter be adopted with respect to the transmission of the accruing records, whether of the Courts of Equity or of Common Law, to the Public Office or Central Repository, it will be very desirable, according to the proposition contained in the letter written by the direction of the Right Honourable the Master of the Rolls, that means should be taken for preventing such Repository from being encumbered with documents not worthy of preservation. It does not indeed follow that because a document belonging to a modern court of justice ceases to have a legal use, it therefore becomes unworthy of preservation, for there are many which should be preserved upon grounds of public policy: but after making a wide allowance for all probable contingencies of modern legal documents becoming useful hereafter, either as legal evidence, or

for general information, a considerable residue will remain for which it cannot be reasonably supposed that any future use will arise. The accumulation of useless documents is not only a great inconvenience in itself, but a positive detriment to those records which are useful, by increasing the care and labour of the officers of the establishment, as well as by being a charge upon the funds which ought to be better applied.

"When detached documents are deposited, according to the course of business, in an office belonging to a Court of Law or Equity, and particularly such documents as consist of the process by which parties are brought into Court, or appear in pursuance of such process, it is necessary that those documents should be entered in books, or otherwise registered for the purposes of search. This entry or registration may be easily rendered satisfactory, and condensed in a moderate compass. From the nature of such documents, which are framed according to set and established forms, and of which the mere technical name (*e. g.* writ of summons) conveys precisely the whole legal idea, the entire contents can be abstracted by columnar arrangement, and more conveniently preserved in the book than in the original itself. But if such a register be imperfect, or be not capable of being given in evidence, it becomes necessary to preserve both the register and the original: the first, in order that searches may be made thereby; the last, in order to obtain that authentic information which the register does not contain or disclose.

"The documentary evidence of the proceedings of a Court of Justice should unite compactness and regularity. By 'compactness' is to be understood the preservation of such evidence in some one authentic form, avoiding repetitions of the same matter, and so as to dispense with accumulated documents relating to initiatory or interlocutory proceedings, or

respecting matters of which evidence exists in other forms, or of which the utility passes away, either pending the suit, or within a limited period after its conclusion: and by 'regularity' is to be understood the principle which, it is humbly submitted, should be an essential character of the record departments of every Court of Justice, of retaining a sufficient remembrance or memorial amongst its records of all the matters and subjects upon which the jurisdiction of the Court has been exercised; whether the same remembrance or memorial be effected by one substantive original document, or by one full copy thereof, or by one abstract or abbreviated entry, in which the names of all the parties to the suit or application, and the legal tenor and effect of the proceeding, shall be sufficiently expressed or defined, and so as that the same may be given in evidence. And furthermore it is expedient that, where consecutive entries or enrolments exist, they should, as far as possible, be consolidated, so as to prevent the unnecessary multiplication of the branches of the several classes of records."

Of the *Chancery* Records the Report states:

"With respect, however, to the present plan of dealing with these equity records, it is susceptible of much improvement. The six-fold division of the records, the six sets of indexes, and all the other peculiarities arising from the ancient, but now obsolete, character of the Six Clerks as officers waiting upon the Chancellor, and as attorneys of the Court, and of the Sworn Clerks, or Clerks in Court, as the actual solicitors of the suitors, disperse the records in an unsatisfactory manner, and which could be remedied by casting the records into one series;—the bill to be placed in the series according to the date when it is filed, and all the answers annexed to it as they come in, and a proper calendar should be made by, and at the expense of the Six Clerks, under the direction of the Master of the Rolls, in which the names of the plaintiffs, the defendants, and the scope of the suit, should be all specified. The expediency of these reforms, both in the mode of filing the equity proceedings and of calendaring the same, will best appear from the statement made by the Assistant Keeper at the Tower, who, in a Report dated 1st August, 1840, expresses himself to the following effect respecting the Chancery proceedings there deposited:—

"This class, as far as bulk is concerned, is perhaps twenty times greater than all the others together: there are upwards of 10,696 bundles of bills and answers, each bundle containing about 60 or 70 suits, and nearly as many bundles of depositions, and it would be the work of years to catalogue them properly; by which I mean to take out the date of each bill (as they are not chronologically arranged) and the names of the plaintiffs and defendants. The utmost that ought to be attempted at present (and that would occupy some years) would be to take the title of each bundle, and the number of bills and answers contained therein:

it would occupy very little more time to stamp each separate suit. The present arrangement of these Records is very confused, and a stranger would be some time comprehending it: for instance, previously to the reign of Elizabeth, the bills and answers are arranged under the name of the Chancellor to whom the bill is addressed; those of the reigns of Elizabeth, James I., and Charles I., are arranged in bundles containing about 60 causes. They appear to have been sorted under the name of the first plaintiff mentioned in the bill, or the name that first caught the eye of the sorter, so that all suits where the plaintiffs' names begin with A are placed together, and so for the rest of the alphabet; but even this arrangement is not chronological: for instance, you will find a bill filed in 1558, the next in 1596, the next in 1602, and the next in 1567, and *sic de cæteris*. The bills and answers from the reign of Charles II. to the end of the year 1714, are even more confusedly arranged: for instance, they are divided into six divisions, bearing the names of the Six Clerks in Chancery at the time they were sorted, and each division is arranged quite differently from the others, and even in the same division there is no general system. Sometimes they are arranged alphabetically, but not chronologically, like those of the reigns of Elizabeth, James I., and Charles I.: others have the whole alphabet in a bundle, but not chronologically arranged. Some are arranged under bills filed in a given year, but which you cannot depend upon. Several bundles are arranged in terms; others, and indeed the greater portion of them, are arranged under the title of bills filed before 1714. In several instances the bill is in one bundle, an answer in another bundle, and a second in another. So that, if a search be required for a bill filed in any given year after Charles I., and before 1714, you will, nevertheless be obliged to look through, almost page by page, 36 folio volumes closely written. The bills filed between 1714 and 1758, are somewhat better arranged, although in six divisions, bearing the names of Six Clerks in Chancery. Many of them are arranged under the four terms of the years; others under the denomination of "Study Matters" in years; others under that of Pleadings in years; others under that of Single Bills. There are six large folio volumes of Indexes to these suits."

"The bulk of these Equity Records, which have accumulated both at the Tower and the Six Clerks' Office, is so enormous as almost to forbid any hope of arranging and indexing this existing stock upon a better plan; but, as this bulk is increasing in an accelerated ratio, the necessity of a better order and system of management of the Equity Records for the future becomes the more urgent and imperative."

"With respect to Depositions of Witnesses, those which are kept at the Six Clerks' Office have been taken in the country by commission, whilst those in the Examiners' Office have been taken in town. This separation is inconvenient, inasmuch as both classes of deposi-

tions may, and not unfrequently do, arise in the same cause, and this adds to the complexity and difficulty of reference and search. It would be advantageous if these could hereafter be united into one series, or at least calendar as one series under the direction of the Master of the Rolls, in such manner that all the depositions may be found by searching in connexion with the suits to which they belong.

"The last of the Chancery offices upon which any observations remain to be made is the Subpœna Office. Here, for the purpose of preventing the accumulation of useless documents, it might be expedient to restore the practice of keeping the Subpœna Book, with such alterations or additions as may render it a complete and effective Record, and so as to dispense with the necessity of preserving the original precepes.

In the *Common Law* department of Records, it is remarked that

"When the transmissions shall in future take place from the offices of the Masters of the Courts of Common Law, or otherwise from such Courts, whether in continuation of the classes of the records now in the custody of the Master of the Rolls, or of classes not yet in his custody, it will be expedient that they should be previously provided, by the officers of the Courts, with full and sufficient indexes or calendars, and also by such officers be properly repaired, bound, placed in covers, ticketed, numbered and indexed, and in all respects made complete for permanent deposit in the general repository, without any further expense to the record service; all such operations to be performed in such manner as may be satisfactory to the Master of the Rolls. It is from these records and documents that the fee-funds of the Courts arise; and when, as up to this time, the records transmitted into the custody of the Master of the Rolls are deficient in the before-mentioned respects, the record service has to defray all the expenses of the records, from which records the fee-funds of the several Courts have been deriving all the pecuniary benefit. In all that relates to the repairs, arrangement, and deposit of the records, the services of the record service upon the records of your Majesty's Courts of Law and Equity, and all the labours of the assistant keepers, clerks, and workmen employed upon such records, are virtually for the use of the Courts exactly in the same manner as if the records had not been removed out of the custody of the officers previously having charge of them. And it may be remarked that if (*e. g.*) the records of the Common Pleas had not been transferred into the custody of the Master of the Rolls, the Judges or other proper authorities might have directed that all the extensive repairs now performing by the record service, as well as the inventory and calendars, should have been executed by the officers of the Court, and defrayed out of the fee-fund of the Court. The records of the Courts of Law and Equity, of more than 20 years' standing, are

placed under the charge and superintendence of the Master of the Rolls for the purpose of performing certain duties relating to the stowage, preservation, safe custody, and management of the records in one building or repository, which, according to the present organization of the Courts, could not be conveniently or uniformly performed by the officers of such Courts. But, except for the special objects of the act, the portions of the classes of records transferred into the custody of the Master of the Rolls form but one series with the other portions of the same respective classes under 20 years of age remaining in the custody of the several Courts.

"The removal of the Common Law records of each successive year into the custody of the Master of the Rolls, does not render them less the living and subsisting Records of the Courts than they were the year previous to such removal. They continue under the authority of the Judges for all purposes connected with the jurisdiction and judicature of the Courts; and therefore it is, as before submitted, expedient that when the Courts transfer their accruing records to the General Record Office, they should at the same time exonerate the same from any charge which attached to such records whilst in the original custody, and deliver them in such a state as not to occasion any further expense to the record service.

"With respect to a considerable proportion of the documents composing the record or documentary proceedings in the Common Law Courts, much remains to be accomplished for their convenient and systematic stowage and arrangement according to the principles laid down by the Master of the Rolls, and the observations heretofore made as to the needful degree of compactness and regularity which they ought to possess—qualities which, it is submitted, are equally desirable, whether such documents and records remain in the custody of the officers of the several Courts, or are transmitted to the general repository.

"These remarks apply very particularly to the classes consisting of precepes and appearances, judges' orders filed relating to interlocutory proceedings, affidavits used during the progress of the cause, and to some other similar documents alluded to in previous sections. The various books now kept in the Common Law Offices, containing entries of matters existing in the detached documents brought in by the suitors, and of which books some specimens are given, do not at present, (as it is conceived) exhibit the substance with such fullness as to supersede the necessity of preserving the documents from which the entries are made: the documents therefore accumulate in the inconvenient manner before mentioned; and some suggestions were submitted in my report to the Master of the Rolls, and afterwards transmitted to the Masters of the several Courts, for the purpose of rendering these books more complete. Upon these suggestions the Masters of your Majesty's Court of Queen's Bench remark, in their letter of the 6th of March, 1841, that "the present

mode of keeping the books in the different offices, is, for the most part, well calculated to attain the objects it has in view, the intended purposes being facility of access and dispatch of business. At the same time the Masters are perfectly aware that the *record keeping* (so to express it) of these Courts, is, in many respects, susceptible of improvement, as regards classification and arrangement; and to the introduction of such improvements, under the sanction of your Lordship and the Judges of the respective Courts, the Masters will readily lend their fullest assistance.

"Should it be thought proper, by legislative sanction, to make the Writ Book and Appearance Book receivable in evidence (and the remark will equally apply to the Day Book in the Judgment Office), the Masters entertain no doubt that they shall be able to devise means, by a precise and formal entry of all essential particulars, to make such books a full and complete memorial and register of the 'proceedings;' and it is therefore hoped that the means will be found of carrying the principle into effect."

The following observations regarding the proposed destruction of useless Records are important.

"The indefinite preservation, for example, of affidavits relating to service of process, or other interlocutory proceedings, is, perhaps, scarcely needful. The period of preservation must be a matter of consideration with those who are conversant with the rules and practice of the Courts: and in the report made by the Masters of the Common Pleas, the following eight several classes of records, then in the Treasury of the Court, are pointed out as not worthy of preservation:—1. Affidavits of debt to warrant arrests, under the statute 12 G. 1, c. 29, and subsequent acts. 2. Affidavits of service of process to compel appearances. 3. Affidavits of the due delivery of declarations against prisoners, with the declarations annexed. 4. Affidavits of the service of declarations in ejectment, with the declarations annexed. 5. Affidavits to verify the acknowledgment of consors of fines. 6. Affidavits of the due execution of writs of *dedimus protestatam*. 7. Affidavits of justification of bail in country causes. 8. Attorneys' affidavits relative to their admissions."

"Some of the affidavits thus noticed by the Masters of the Court of Common Pleas, belong to classes which no longer accrue; but the suggestions are very important, as proceeding from individuals of great practical experience, and pointing out, by the examples which they particularize, the principles upon which the selection ought to be made.

"A further elucidation of the same subject is given by the Masters of your Majesty's Court of Queen's Bench, who, in answering in a general manner the several questions relating to the expediency of destroying documents, express themselves, in their said letter of the 6th of March, 1841, to the following effect:—

'As regards the destruction of documents, however desirable it may be to get rid of many which are now preserved, it appears to us that as yet there is no authority to direct it: and whenever such power shall be obtained, the exercise of it will require the greatest caution and deliberation'. Then will arise the difficult question anticipated by Sir Francis Palgrave: *What apparently useless papers can be safely destroyed, and when?* Questions which, we submit, can only be properly determined by your Lordship and the other Judges.'

"The Master of the Crown Office of the same Court has, by his Report of the 20th of February, 1841, entered into the subject in detail; and it will be found that, under certain qualifications, that very experienced officer considers that the following classes in his department, viz, the presentments, the orders of session, jury processes, recognizances, and certain classes of affidavits, do not require to be preserved. The fullest information, however, upon this important subject, has been obtained from the Remembrancer of your Majesty's Exchequer, from whose letter or Report, dated the 27th of March, 1841, the following extracts are made:

"In reply to the queries regarding the expediency of destroying *affidavits*, I may remark, that it is possible that some affidavits, as of service of proceedings, or notices, might be destroyed without detriment; but it is impossible positively to affirm that they might, since the proceedings of the Court, involving important results, are often based even upon such affidavits; and in regard to others, it is impossible to classify them in the manner pointed out, since they form the evidence upon which the Court adjudicates; and in many cases the absence of that evidence, and of the grounds of the Court's early proceedings in a case, might be highly essential; although in others it might be little so, or not at all: but it is scarcely necessary to point out the difficulty of leaving a power and responsibility of selection in such matters to any authority lower than the Court itself.

"It might happen that *informations*, which had been enrolled, might be destroyed without detriment, after the trials were over, provided the enrolment was looked upon, in law and practice, as sufficient evidence in any matter in which the original information was so; but this involves the questions of the correctness and authority of the enrolment, and of the circumstances under which it is made, and of any possible circumstances which might interpose to vitiate it: besides many other considerations not easily treated of without a careful examination and estimate, not merely of experiences, but possibilities.

"The documents relating to the *Collection of the Revenue of Assessed Taxes, appraisements of smuggled goods*, and other documents connected with the levy and collection of the revenue generally, would seem, perhaps, *prima facie*, to be of no particular importance after a period of years, at least with a view to the probable necessities of the public or the state,

in regard to them. But I cannot pretend to say how often, or for what purposes, they may be searched or adverted to; nor could any one, I apprehend, form even a crude and cursory opinion upon the subject, without reference to the departments respectively, of whose proceedings they are a record; and they themselves, perhaps, would scarcely be adequate judges, any more than a mere custos of records could be, of the propriety of preserving or of effacing the traces of their official steps.

"The *Estreats of Fines and Deodands* are, no doubt, recorded on the schedules to the long writ, and it may be that after a certain number of years, the *estreats* themselves might, in consequence, be destroyed; but the remarks made in some former cases partially apply to this one, and it demands the same caution.

"The use of enrolling the *Public Accounts* is to ensure their being perpetuated. If an original account is destroyed, or missing, the enrolment of the debt has already made it of record, and process may be issued upon that record to recover the amount debited against the accountant. The discontinuing the enrolment of any public document requires more ample considerations than can be either brought under review within the limits of a letter, or disposed of by an individual opinion.

"The *Estreat Rolls* from the Petty Bag Office are sometimes useful in construing the rights of lords of liberties; but, as a record of them is kept in Chancery, it may seem *prima facie*, that they might be destroyed, though subject to the same remarks.

"The above paragraphs contain as much as occurs to me, upon a careful perusal of your paper, although I cannot pretend that they are founded upon a very profound or rigorous examination of the matters necessary to be searched into before offering a more decided or useful opinion than these remarks will probably appear to you to present. I may be permitted to make, in conclusion, a few general observations to explain their caution or to excuse their sterility.

"It is obvious, in the first place, that the only adequate judges of the expediency of a record, or the propriety of its destruction, must be the authority which originated it: and that no mere custos to whose care they may be confided can be, on that account, competent to decide upon their merits and object;—it will therefore be impossible for the least of the proposed alterations to be made without the order of the Chief Baron and Court of Exchequer, and it is not certain whether they themselves can very readily take upon themselves to affirm, that by no possibility a given class of documents which spring up in the progress of causes adjudged by them can be of use to any future individual in either prosecuting or resisting a claim (the only supposition under which the destruction of one set of records of a transaction, and the preservation of the remainder, could be justified or defended). It does not follow that because a record is multiplied, one or more of the exemplars of it is therefore necessarily useless.

The chances of its permanence in different places and under different circumstances; the relative value of the original and the copy; the conveniences of applying to purposes of practical utility either the one or the other; the mere collateral curiosity possible in posterity on the subject; the preservation of a uniform character in legal or official proceedings; the merit of a record with reference to analogy with other similar ones in similar transactions; the reference that may be made to, and the inference that may be drawn from, its existence or absence in given cases;—all these, and many more which elude a superficial glance at such subjects, are elements of the inquiry which should precede even the desire to destroy. Of all experiments that occupy or excite, destruction is the most questionable, and the most irremediable. A partial destruction, in such a case as records, is even more susceptible of possible error and abuse than a general one. To get rid of one selected set of the records of its proceedings is one of the gravest matters, however apparently trifling in the items, that can be submitted to a court of justice.

"Lastly, upon this subject the Lord Chief Justice of your Majesty's Court of Queen's Bench has delivered his opinion, that the occasional destruction of papers which is obviously necessary will however require much consideration, as a regular system of proceeding. On this point it strikes me that the sanction of the legislature will at least be extremely desirable: and I cannot refrain from suggesting, that as soon as a satisfactory scheme of general regulation is arranged, the expediency of incorporating it in an act should also be taken into consideration." And in this opinion the Lord Chief Justice of your Majesty's Court of Common Pleas concurs: therefore, whatever differences of opinion may subsist as to the classes of documents to be destroyed, there can be none as to the expediency of obtaining such powers as may enable the officers of the several Common Law Courts (as well as the Court of Chancery), under the authority and directions of such Courts, to make the needful selection equally with respect to the documents already in the custody of the Master of the Rolls, and with respect to the accruing records previous to their transmission to the general repository.

"As to writs returned into Court, it is difficult to assign any reason for the preservation of process against person or property beyond such a period as might be sufficient to afford opportunity for the parties to apply to the Court in cases of irregularity or abuse, or for bringing any action grounded upon such irregularity or abuse. None of these cases would, it is apprehended, require the preservation of the process above twenty years, and therefore none would come into the public office; and the Masters of the Common Pleas remark, in their report, that "it scarcely seems possible to imagine a case in which any necessity can ever arise for referring to the ordinary writ of *capias ad respondendum*, or to any common in-

terlocutory writ, after a few years." But with respect to writs by which new matter is placed upon the file, as in the case of the removal of proceedings of inferior Courts, it is expedient they should be preserved and transmitted to the general repository."

LEGAL BIOGRAPHY.

LORD CHANCELLOR HARDWICKE.

We have already noticed in this Work^a the character of Lord Chancellor Hardwicke, but it has been suggested that this eminent lawyer deserves a more detailed narrative than the one alluded to, and we, therefore, willingly comply with the suggestion.

Philip Yorke, first Earl of Hardwicke, was unquestionably one of the most distinguished ornaments of the law. He was born at Dover, on the 1st December, 1690, and was the only son of an attorney, who practised there for many years. He was educated under the care of Mr. Samuel Morland, of Bethnal Green, who was the intimate friend of the celebrated Dr. Samuel Clarke, and had then the fame of being one of the best read and most ingenious scholars of his time. He left that instructor not only deeply skilled in the learned languages, but with a nicety of classical taste which he is said to have indulged in and exercised even amidst his most arduous and important employments. He was removed, at an early age, to the tuition of Mr. Salkeld, an eminent conveyancer, who had also, at the same time as pupils, three youths, Jocelyn, Parker, and Strange, who afterwards became respectively, Chancellor of Ireland, Chief Baron of the Exchequer, and Master of the Rolls. During his stay here, it happened that Sir Thomas Parker, afterwards Earl of Macclesfield, and Lord Chancellor, but at that time Chief Justice of the King's Bench, requested Mr. Salkeld to recommend to him a young gentleman qualified to instruct his son in the principles of the English laws, and Mr. Yorke, who was the party named by Salkeld, was immediately accepted. In his performance of this office, his early professional skill, as well as his extraordinary general talents, were presently observed and admired by the father, while, combined with the most amiable of tempers, they produced a strict intimacy and friendship with the son. Under these auspices he studied in the Middle Temple, and was called to the Bar in the year 1714. He rose rapidly into an extensive practice, and, having become known to the Duke of Newcastle, was, by the interest of that nobleman, returned member for Lewes, in Sussex, as he was also for Seaford, in the same county, in two successive Parliaments. Such was now his reputation, as well as his proficiency, that before he had fully attained the age of thirty, and when he was the youngest barrister on

the western circuit, his friend, the Lord Chancellor Parker, recommended him for the office of Solicitor General, to which he was appointed on the 23d of March, 1719—20, and he was soon afterwards knighted.

On the 31st of January, 1723—4, he was promoted to the office of Attorney General. In performing the duties of that eminent station, "he was remarkable for candour and lenity. As an advocate for the Crown, he spoke with the veracity of a witness and a judge, and though his zeal for justice, and the due course of law was strong, yet his tenderness to the subject in the Court of Exchequer was so distinguished, that it happened once, when he touched on his own conduct in that point, in some of the parliamentary debates on the excise, in 1733, the whole House of Commons assented to it with an universal applause. He was so unmoved by fear or favour, in what he thought right and legal, that he often debated and voted against the Court."^b

He remained in the post of Attorney General for ten years, when, on the resignation, in October, 1733, of Lord Chancellor King, public opinion, and indeed the ordinary usage of legal advancement, pointed to him as the successor. It is, however, a curious fact, that the government seeming indifferent which of two most able and faithful servants to place in that exalted office, it was in some measure left to be settled in friendly negotiation between themselves. He agreed with Sir Charles Talbot, the Solicitor General, that it would be more serviceable, under some peculiar circumstances of the period, to the public, and more honourable mutually to their own characters, that the latter should succeed to it; and Sir Philip Yorke accordingly waived his claim for the time, to the Seal, and accepted the Chief Justiceship of the King's Bench, which happened also then to be vacant. It is remarkable, too, on this occasion, that it was proposed to augment the salary of the Chief of that Court from 2000*l.* to 4000*l.*, and that he refused to accept the increase. He was appointed on the 31st of October, 1733; and on the 23d of the succeeding month was advanced to the peerage, by the title of Baron Hardwicke, of Hardwicke, in the county of Gloucester. In his new station, he acquired a high reputation for candour and sincerity on the Bench, displaying without reserve those characters of nature which the artifices of the bar invariably suppress, or leave doubtful, and love and esteem for the man became now added to respect for the wisdom and learning of the Judge. He is said, indeed, to have been a pattern of humanity, patience, and courteousness.

He presided in the Court of King's Bench little more than two years, for his friend Lord Chancellor Talbot, dying on the 17th of February, 1736—7, the King, four days after, delivered to him the Great Seal. From this period, through the long series of years for which Providence permitted him to remain a

^a See 2 L. O. 288.

^b Annual Register for 1764.

bleasing to his country, the events of his life were chiefly confined to the performance of the duties of his Court, and the transactions of the Cabinet. On the 31st of July, 1749, he was elected High Steward of the University of Cambridge, and, on the 2d of April, 1754, received the final reward of his long and eminent services, in an unsolicited grant of the further dignities of Viscount Royston, and Earl of Hardwicke. In November, 1756, from no party disagreement—from no personal pique—with no secret views—he resigned his high office, with the same dignified modesty which had always distinguished him in the exercise of his faculties.

The *Annual Register*, which has been quoted to illustrate some part of this sketch, proceeds to give the following comprehensive view of the whole of this great man's character, probably from the pen of Edmund Burke himself, who is well known to have been then, as well as for some years before and after, the editor of that publication.

“His resignation of the Great Seal gave an universal concern to the nation, however divided at that time in other respects: but he still continued to serve the public in a more private station, though he had twice in his choice, whether he would again fill other public offices of high dignity. His attendance at Council, whenever his presence was necessary; at more private meetings, whenever his opinion was desired; in the House of Lords upon every occasion where the course of public business required it; were the same as when he filled one of the highest offices in the kingdom. He had a pleasure in giving the full exertion of his abilities to the state, without expecting or receiving any emoluments, of any kind whatever, and he seemed only to have quitted the laborious details of the Chancery, that he might be at more leisure to attend to such parts of the public service as were of more general use to the community. His reverence for the laws and constitution of his country was equal to his extensive learning in them. This rendered him as tender of the just prerogative, invested in the Crown for the benefit of the whole, as watchful to prevent the least encroachment upon the liberty of the subject. In the character of a statesman, his knowledge of mankind, his acquaintance with history and treaties, both ancient and modern, added to his long experience, penetration, and superior understanding, enabled him to decide, with force and exactness, upon all the questions in which he was consulted by his colleagues in other branches of the administration; and he had a peculiar talent of analyzing such questions by stating the arguments on both sides in a comprehensive and pointed view.

“In judicature, his firmness and dignity were evidently derived from his consummate knowledge and talents; and the mildness and humanity with which he tempered them from the best heart. He was wonderfully happy in his manner of debating causes upon the Bench, which he did copiously and elaborately. His apprehension was so quick and

steady, that it was unnecessary to repeat facts or reasoning which had once been stated to him, a second time. His attention to the arguments from the Bar was so close, and so undisturbed by impatience, or any passion or affection of his mind, that he condescended to learn from the meanest, whilst he every day instructed and surprised the ablest. He gave the utmost scope to the objections which pressed strongest against his opinion, and often improved them: but his judgment was so correct and excellent, that even his unpremeditated opinions were generally acknowledged to be profound, and to turn upon the best points which the cause afforded, and would bear examination when reduced into written reports. The extraordinary despatch of the business of the Court of Chancery, increased as it was in his time beyond what had been known in any former, was an advantage to the suitor inferior only to that arising from the acknowledged equity, perspicuity, and precision of his decrees. The integrity and abilities with which he presided there, during the space of almost twenty years, appears from this remarkable circumstance—that only three of his decrees were appealed from, and even those were afterwards affirmed by the House of Lords.

“Of his talents as a speaker in the Senate, as well as on the Bench, it will be sufficient to say that whenever Lord Hardwicke delivered his sentiments in public, he spoke with a natural and manly eloquence, unsullied by false ornaments, declamatory flourishes, or personal invectives. He had a method and arrangement in his topics which gradually interested, enlightened, and convinced the hearer; when he quoted precedents of any kind, either in law, history, or the forms of parliament, he applied them with the greatest skill, and at the same time with the greatest fairness; and whenever he argued, his reasons were supported and strengthened by the most apposite cases and examples which the subject would allow. In questions of state and policy, he drew his principles from the ablest authorities in legislation, and the art of government; and in questions of jurisprudence, from the purest sources of the laws and constitution of his own country, and when the occasion called for it, of others. His manner was graceful and affecting; modest, yet commanding; his voice peculiarly clear and harmonious, and even loud and strong, for the greater part of his time. With those talents of public speaking, the integrity of his character gave a lustre to his eloquence, which those who opposed him felt in the debate, and which operated most powerfully on the minds of those who heard him with a view to information and conviction: and it were to be wished, for the sake of posterity, that his speeches on a variety of important points of law, equity, and policy, were preserved in a more lasting register than that of the memories of his contemporaries. Convinced of the great principles of religion, and steady in the practice of the duties of it, he maintained a reputation of virtue which added

dignity to the stations which he filled, and authority to the laws which he administered."

This admirable nobleman died on the 6th of March, 1764.^a

CRIMINAL LAW REFORM.

PUNISHMENT.—PENITENTIARIES.

THE feeling which appears to be gaining ground in favour of a total abolition of the punishment of death, is, very naturally, opposed by the consideration of the practical difficulty in finding adequate punishments to be substituted, which shall have the effect of deterring others from committing similar offences. We lately noticed a work by Mr. Sampson, on Criminal Jurisprudence in relation to mental organization (see p. 356, *ante*). The principle contended for is, that criminals whose offences are of a violent character are not deterred by the prospect of violent punishment; and, on the contrary, by the excitement of their propensities, they become more prone to commit offence. The reform proposed is by improving the system adopted in penitentiaries; and in considering the effect of these institutions for the reform of offenders, we shall extract from Mr. Sampson's book the following account of the methods adopted in the Eastern State of Pennsylvania:—

"The convict, on his entrance, after the customary examination, is clothed, blindfolded, and conducted to his cell, where he will remain locked up; and after a patient and careful inquiry into his history, and the delivery of an appropriate address to him on the consequences of his crime, and the design to be effected by his punishment, he is abandoned to that solitary anguish and remorse which his reflection in solitude must inevitably produce. Every means which have been devised by philanthropy and experience for effecting reformation, will be zealously applied. The labour in which the convict will be employed is considered as an alleviation, not an aggravation of his sentence. Labour prescribed as a *punishment* is an error in legislation, founded on an ignorance of the feelings, the desires, and antipathies, the habits and associations of mankind: the tedious hours spent in solitude will be a punishment sufficiently severe, without rendering the infliction of hard labour for this cause necessary. The want of occupation will produce a feeling of tedium or irksomeness—the state of mind in which labour or employment will appear to the convict, perhaps for

the first time in his life, as a means of preventing uneasy feelings, of producing relief and pleasure; and as the powerful influence of association is acknowledged, this beneficial feeling will become habitual, and after the discharge of the convict from his durance, will be a most effectual safeguard from the temptations of idleness. Accordingly, persons duly qualified will be employed to teach the prisoner suitable trades, and to instruct him in religion and in the elements of learning. The prohibition of all intercourse with society is not, therefore, to be continual: the visits of the virtuous cannot injure, and must benefit, the majority of the prisoners, between whom *alone* all communication is to be rendered impossible.' And again, 'religious and other instruction will be constantly and regularly administered; the visits of the virtuous and benevolent permitted and encouraged under proper restrictions; unremitting solitude or separation from all society will not, therefore, be practised. Intercourse with the enlightened and virtuous members of the community must inevitably frequently console and benefit, and can never torture or injure the convict. *He will be separated only from evil society, from association with the depraved and hardened: the progress of corruption will be arrested; he can neither impart nor receive from them contamination: if a germ of virtue or of shame exist, it may be preserved and cultivated; his character will not be irreparably destroyed by exposure; his resolutions of reformation blasted by an acquaintance with his fellow convicts; an acquaintance which, when once formed, can never be dissolved.*'

"These were the views under which the institution was organized by the legislature; and although, from the circumstance that the true principles of criminal treatment are here only partially adopted, and imperfectly carried out (the institution requiring to be systematized as a moral hospital), coupled with the absence of an efficient police, I am prevented from fully entering into the sanguine views of its founders, I can yet offer the best testimony of its success as compared with all previous plans. After an experience of four years, the Annual Report of the Warden contained the following passages:—"The punishment (discipline?) inflicted, not merely on the body, but on the mind of the prisoner, *waiting severity and humanity*, is one which the unhappy culprit feels with all its force; but there is nothing in its operation calculated to increase his evil passions, or stimulate him to hatred or revenge. Those who have the care of him treating him with the *kindness and compassion which are due to the unfortunate man, rather than the unnecessary and unfeeling harshness too frequently displayed to the victims of folly, vice, and crime*, he is soon made to feel that the horrors of his cell are the fruits of sin and transgression, and the only certain relief to be obtained is through the Redeemer. Having no one to prompt in wickedness, or shame him for his tears, he becomes humbled in spirit, and anxious for help in the way of truth; and I am

^a This Memoir has been abridged from Mr. Lodge's Peerage.

pleased to be able to say, that *I believe there are some who rejoice that they have been brought here.* I can truly say, that the more I see of the operation of our system, and the more thoroughly I become acquainted with the character of its inmates, the more important I view its establishment, and the *greater its humanity appears.* It is a mi-take to suppose that the inmates of prisons are a set of outlaws and tiger-like beings, lost to all good in this world, and without hope of an hereafter. Too many (indeed, most of them), on first conviction, are either neglected youths thrown into the world without education and without friends (often the victims of hard masters), or ignorant men, the dupes of artful knaves, who know how to elude detection. Neglect of early education, the use of ardent spirits, gambling, and dealing in lottery-tickets, are the most prominent causes of felony.

“The deficiency in common school learning is greater than is generally supposed: of the 142 prisoners who have been received here from the commencement, only four have been well-educated, and only about six more who could read and write tolerably; and we rarely meet with a prisoner who has had attention paid to moral and religious instruction.”

“Every person convicted of a felonious offence within the city and county of Philadelphia, whose term of servitude is for two years and upwards, is sentenced to this penitentiary; as also all prisoners convicted of felony in the counties lying east of the mountains, whose term of imprisonment exceeds one year. This district includes the largest portion of the state of Pennsylvania, with a population of more than a million.

“In 1838, after it had been established nine years, the report testifies—‘The experience of another year enables us to state that no instance of insanity has occurred in this institution, which has been produced by solitary or separate confinement operating injuriously on the mind. Cases of dementia, the effects of vicious conduct, occur every year; but they usually yield to medical remedies. The fears which some entertained as to the influence of long confinement in injuring the health of the body as well as the mind of the prisoner, have proved groundless. One, who had been in confinement for seven years, was recently discharged in good health, reformed in temper and conduct, and is now doing well. When he was convicted, he declared that he preferred death to confinement for seven years. When discharged, he expressed grateful feelings for the kindness manifested to him; declaring that he had received benefits which could never be forgotten, and which he hoped never to lose.

“There are some prisoners now in the in-

stitution who have been in confinement for eight years, some six, and some five, and all of them in good health. Among the healthiest prisoners are those who have been the longest time in prison.

“Many of our discharged prisoners are doing well, and some exhibit satisfactory evidence of a reformation of heart and life. In our walk through the city we frequently meet them; and they always greet us with thankfulness, uniformly declaring that it was good for them to have been in the cells of the Eastern Penitentiary.

“We cannot close this report without our acknowledgment to the Supreme Ruler of the Universe for his goodness in crowning our efforts with so much success. We feel persuaded that the Legislature will continue to give this enterprise of benevolence its fostering care and protection; and that the time is not far distant when, by the influence of moral and religious instruction about to be diffused by the aid of common schools throughout the state, such a healthful state of morals will ensue, that intemperance, poverty, and crime, shall almost cease to have a name in our beloved state.”

“And in 1839, after the experience of ten years, during which time 1,036 prisoners had been received, the reports continued to present the same favourable character. The following striking paragraph will illustrate the fact, that a large portion of the infringement by individuals of social duties, arises from the previous non-fulfilment of the duties which society owed to them. Speaking of the prisoners received during the past year, it says—‘More than one-third of them could neither read nor write: 28 had been apprenticed and served until twenty-one years of age, 34 had been at trades and left their masters, and 116 had never been placed out at any regular business—a sad proof of the neglect of duty in parents and guardians.’

“It is well known, that in England, a similar neglect of duty prevails to a great extent. In the returns presented to both Houses of Parliament, dated 11th June, 1840, entitled ‘Criminal Tables for England and Wales, for 1839,’ it is stated that the calculations which have for several years been made as to the ages and degrees of instruction of criminals, exhibit a very great uniformity of result. During the last four years, nearly 41 per cent. of the criminals do not exceed twenty-one years of age; and in the next division of the tables, those not exceeding thirty years are included, 71 per cent. This would give criminals a short career, and may in a great measure be attributed to the numbers annually removed by transportation.

Degree of Instruction.	1839.	1838.	1837.	1836.
Unable to read and write	33.53	34.40	35.85	33.53
Able to read and write imperfectly	53.48	53.41	52.08	52.33
Able to read and write well	10.07	9.77	9.46	10.66
Instruction superior to reading and writing well32	.34	.43	.91
Instruction could not be ascertained	2.60	2.08	2.18	2.68

And yet, in the face of this non-fulfilment on the part of society of obvious obligations, advocates can be found for the infliction of revengeful punishments upon those who are the hapless sufferers from its neglect!

"It will be seen, from what I have stated, that so far from being the advocate of a sentimental humanity, which turns with horror from the contemplation of that law of the Creator by which pain is rendered consequent upon misconduct, I advocate a *severer* system than that which at present obtains, since I assert that the most severe pain which can be inflicted upon any offender, is precisely that pain which results from a philosophical treatment for his cure. It is a treatment which the patient would ever afterwards remember with mingled feelings of gratitude and terror—gratitude for the improvement which it has wrought upon his nature, and terror at the remembrance of the prolonged and bitter struggle by which that improvement was attended. The difference between the system which I advocate, and that which is at present in force (if the vague and contradictory treatment of offenders, which is now practised, can be called a system), is simply this, that I advocate a discipline which should benevolently produce great pain at first, with the view of preventing much greater pain, which must otherwise inevitably be endured for the future; while at present we revengefully inflict pain in a lesser degree, which is productive of little future benefit to the sufferer—leaving, indeed, his disorder generally unmitigated, and oftentimes increased."

On the question of the *duration* of punishment, the chapter on the treatment of Criminals in Mr. Combe's Moral Philosophy, contains the following suggestions:

"If the principles which I advocate shall ever be adopted, the sentence of the criminal judge, on conviction of a crime, would simply be one finding that the individual had committed a certain offence, and was not fit to live at large in society; and, therefore, granting warrant for his transmission to a penitentiary, to be there confined, instructed, and employed, until liberated in due course of law. The process of liberation would then become the one of the greatest importance. There should be official inspectors of penitentiaries, invested with some of the powers of a court, sitting at regular intervals, and proceeding according to fixed rules. They should be authorized to receive applications for liberation at all their sessions, and to grant the prayer of them, on being satisfied that such a thorough change had been effected in the mental condition of the prisoner that he might safely be permitted to resume his place in society. Until this conviction was produced, upon examination of his dispositions, of his attainments in knowledge, of his acquired skill in some useful employment, of his habits of industry, and, in short, of his general qualifications to provide his own support, to restrain his animal propen-

sities from committing abuses, and to act the part of a useful citizen, he should be retained as an inmate of a prison. Perhaps some individuals, whose dispositions appeared favourable to reformation, might be liberated at an earlier period on sufficient security, under bond, given by responsible relatives or friends, for the discharge of the same duties towards them in private which the officers of the penitentiary would discharge in public. For example, if a youth were to commit such an offence as would subject him, according to the present system of criminal legislation, to two or three months confinement in Bridewell, he might be handed over to individuals of undoubtedly good character and substance, under a bond that they should be answerable for his proper education, employment, and reformation; and fulfilment of this obligation should be very rigidly enforced. The principle of revenge being disavowed and abandoned, there could be no harm in following any mode of treatment, whether private or public, that should be adequate to the accomplishment of the other two objects of criminal legislation—the protection of society and the reformation of the offender. To prevent abuses of this practice, the public authorities should carefully ascertain that the natural qualities of the offender admitted of adequate improvement by private treatment; and, secondly, that private discipline was actually administered. If any offender liberated on bond should ever reappear as a criminal, the penalty should be inexorably enforced, and the culprit should never again be liberated, except upon a verdict finding that his reformation had been completed by a proper system of training in a penitentiary."

REMARKABLE WILLS.

No. V.

EDWARD THE FIRST, 1271.

En nun du Pere, du Fitz, e du Seynt Esprit, Amen. Nus Edward, einse filz au noble Roy l'Engleterre, fesoms nostre testament, en nostre bon sen, e en nostre bone memorie, le Samedis prochein apres la Pentecoste, en le an de nostre seigneur mil, de cent, septsaunt secund, en ceste manere. E primes, nus divisoms a Dieu, e a nostre dame Seinte Marie, e a tuz seyns nostre alme; et nostre cors enseuelir, ou nus esseketur, ceu est a saver, sire Johan de Breayne, sire William de Valence, sire Rog. de Clifford, sire Payn de Chautros, sire Robert Tiletot, sire Otes de Grauntson, Robert Burnett, et Attoyne Bek, o oukuns de eus aurunt devise: As queus nus donoms et grauntoms plener poer, ke il pusint ordiner por nostre alme, de tuz nos beyns, moebles e noun moebles, cum en rendre nos dettes, e redrecher les tort ke nus avoms fet par nus ou par nos baliz, et rendre a nostre gent lur service, sulom ceo ke il verrunt ke bon seyt.

E por ceo ke nus savoms ben, ke nos moe-

bles ne purrunt pas suffire a ceo volums e oitoms ke uoz avaunt diz exsekuteurs eyent plener poer, le quel nus les grauntoms si avaunt ke nus pouns, de ordiner, et establir de tutes nos teres d'Engleterre, de Irelande, de Gascoine, e de tutes nos autres teres, ke il en puent ourir en memes la manere ke nus seymes quant eles furent en nostre meign, saunt vendre ou doner, e en lur meyns tenir ensemblement o la garde de nos enfaunz, usque au plener age de eus, pur nostre testament accomplir, et nos aumones fere en Engleterre, et aillurs sulum ceo ke nos essekuteurs verrunt ke seyt a fere; as queus fere, nus ordinoms ceynt mille marcs.

Et, apres nostre devis fet, et nos aumons accomplies, volums ke les issues des avaunt dites teres, turnent au profit de noz enfaunz, e demurgent en les meyns des avaunt diz exsekuteurs, juskes a l'age de noz enfaunz avaunt nomes.

Et, si aventure avenge ke nostre seynur rey, nostre pere, murge dedenz le age de nos enfauns (ke Deu defende) nos voloms ke le reaume d'Engleterre, et tutes les autres teres ke porrunt eschair a noz enfaunz, demorgent en les meyns de nos essekuteurs avaunt nomes, ensemblement oveque nostre cher pere le Erceveske de Everwyk,^a e sire Rog. e ovesk autres prodes homes du reaume, ke il akondrunt si mestier seyt, juskes al plener age de nos enfaunz sus nomez, e ke les issues avaunt dites teres seyent cuilliz, e gardez, per les meyns de nos exsekuteurs avaunt diz, e liverez a nos enfaunz, quant il serrunt de plener age a lur profist.

E, sur ceo nus voloms e ordinoms ke deus, ou plus de noz essekuteurs, eyent poer de oyr nos acutes, e de receyvere de tuz nos baliz, on ke il seyent, devaunt nostre departir d'Engleterre.

E puis, se il ne poent muster ke il eyent leal acunte rendue, et si nul de noz baliz seyt mort, ke ses heirs seyent tenuz a rendre la cunte pur luy.

Endreyt de dowarie de nostre chere femme Alianore, volums ke ele eyt pleynement ceo ke fust nome quant nus les pusams, e si de ceo ne se tent pas a pae, nus volums ke ele eyt ceo ke dreyt e ley la dorra, sulum les usages e leys d'Engleterre.

E voloms ausi ke la ou tuz noz essekuteurs ne poirunt estre pur fere le execution de nostre testament avaunt dit, ke quatre ou plus, en num des autrys, eyent poer pur eus, e pur les autrys, pur accomplir le choses susdites.

E pur ceo, priums a nostre seynt pere l'apostle, ke il voyll ceste chose tenir, et fere tenir, e confirmer; e ke il voylle prier nostre cher pere, ke il voylle tenir estable, e fere tenir, par tut son reaume, e tot son poer, quel part ke il seyt, les choses avaunt nomes.

En testimoniaunce de la quea chose, a ceo testament avoms fet mettre nostre sel, et avoms prie sire Johan erceveske de Sur, et vicarie de la seinte eglise de Jerusalem, et les honorables pers, frere Hue Revel, mestre de

l'Hospital, et frere Thomas Berard, mestre du Temple, ke a cest escrit meis ent ausi lur seus, les quieus si le vut fet ensemblement, o nos essekuteurs avaunt nomes en tesmoisaunce des chose sus dites.

Done a Acre, le Samedy avaunt nome, le disutime jur de Juen, l'an du regne le roy nostre pere cinkaunt e sinc.^b

(From Nichols' *Royal Wills*.)

LAW OF ATTORNEYS.

RETAINER.

THE points decided in the following cases, relating to the retainer, and authority of attorneys and solicitors, may be useful to our readers, and they are therefore here collected.

An attorney received certain papers from a lady, who said "that she was entitled to an estate, and that she would pay him, if she recovered it;" the attorney took the papers, saying "that he would do what he could for her," and without further communication commenced an action of ejectment, which he afterwards abandoned, under the conviction that the party had no title: it was held, that the attorney acted without authority, both in commencing and discontinuing the ejectment, and was not entitled to recover the costs thus incurred. *Tabram v. Horn*, 1 M. & R. 228.

It has also been decided that an attorney cannot recover from the assignee of an insolvent debtor the amount of a bill of costs, incurred in proceedings requiring the consent of a meeting of creditors, without proving that such consent was obtained, or that the client was informed he was proceeding at his own risk. *Allison v. Rayner*, 1 M. & R. 241; S. C. 7 B. & C. 441.

A party being desirous of raising a sum of money upon mortgage, employed an attorney for the purpose, and the attorney applied to another attorney, telling him at the same time the name of his principal, and the second attorney agreed to advance the money on behalf of a client, but ultimately the negociation failed from a defect of title; and it was decided that the second attorney could not maintain an action against the proposed borrower for his fees, although it was proved to be the practice for the borrower to pay the expenses of the proposed lender; the course being for the attorney of the latter to send his bill to the attorney of the former, who, if the bill were reasonable, recommended his client to pay it. *Rigley v. Dayking*, 2 Y. & J. 83.

In an action brought by an attorney against two defendants, to recover the amount of his bill of costs, it appeared he was employed by both in the first instance, but that one only undertook to pay; and the jury having found

^b Edward was at Acre, 1271, the fifty-sixth and last year of his father's reign. Rapin III. 488, 489.

^a Walter Giffard, 1265—1279.

that the latter alone was liable, and had given a verdict for the defendants, the Court refused to set it aside, or grant a new trial. *Hellings v. Gregory*, 10 Moore, 337.

Lord *Tenterden* held, that though not absolutely necessary, yet in common practice an attorney ought, before commencing an action, to take a written direction from his client for so doing. *Owen v. Ord*, 3 C. & P. 349.

The authority of an attorney, is determined, on final judgment being signed. *Mucbenth v. Cooke*, 1 M. & P. 513.

TAXATION.

The following cases relate to taxable bills and the costs of taxation.

A charge in an attorney's bill for attending at a lock-up house and obtaining a defendant's release, and filling up the bail bond, is a charge at law, within the statute 2 Geo. 2, c. 23, s. 23, and renders the bill subject to taxation. *Fearne v. Wilson*, 6 B. & C. 86: S. O. 9 D. & R. 157.

It was decided by Lord *Tenterden*, that if an attorney does business for a client, of a nature to make his bill taxable, and other business clearly not so, he is bound to include the whole in one bill, which bill is taxable; and he cannot bring an action in the first instance, and recover for the non-taxable business, but must deliver his whole bill a month under the statute. *Thwaites v. Mackerson*, 3 C. & P. 341.

If an attorney's bill is reduced on taxation, by a sixth part of the amount of the bill delivered, he must pay the costs of the taxation to his client, the Court having no discretion in the matter. *Dickens v. Woolcot*, 8 D. & R. 589.

The costs of taxing an attorney's bill are not allowed to a party who succeeds in striking off a sixth, where the order for taxing is not obtained till after an action on the bill has been commenced. *Benton v. Ballard*, 4 Bing. 561.

NEGLECTANCE.

The following case shews that an attorney is not bound to see that the opposite attorney possesses due authority for consenting to a reference.

A dispute between *A. B.* and *C. D.*, was referred to arbitration. After the reference had proceeded some time, and additional matter was submitted by the attorneys for the parties, and *C. D.*'s attorney signed the submission in his client's presence. *A. B.*'s attorney signed in the presence of *C. D.*'s attorney, but without any authority from his client; the award was afterwards set aside, and *C. D.*'s attorney sued him for the expenses of the arbitration: it was held, that in not requiring to see the authority of *A. B.*'s attorney, he had not been guilty of such negligence as would prevent his recovering the amount of his bill. *Edwards v. Cooper*, 3 C. & P. 277.

UNDERTAKING.

The defendant's attorney entered into the usual undertaking, under a judge's order, to pay the plaintiff the amount of his debt and costs

on the proceedings being stayed; and the defendant died before taxation: it was decided that the attorney was still bound to perform his engagement. *Hellings v. Jones*, 10 Moore, 360; S. C. 3 Bing. 70.

LIEN.

In a recent case, the Lord Chancellor has held, that the lien of a solicitor on the papers of his client is in the nature of a contract. This decision of a Court of Equity places the right of the solicitor on as high ground as possible. The Courts indeed have always been favourable to secure to the practitioner a due remuneration for his services.

The Lord Chancellor said, "I cannot see how there can be any sound distinction between the case of a solicitor claiming a lien on the papers of his client, and the case of any other creditor who holds a security for his debt. It was suggested, at the bar, with reference to the case of *Mills v. Finlay*, 1 Bear. 560, that the existence of a special contract could make a difference; but there is, in fact, no ground for such a distinction. Liens, existing by the custom of trade, or the practice of a profession, are equivalent to contracts; and I know of no distinction, in the law of lien, between that of a solicitor and that of any other party. In the passage which has been cited from Lord *Eldon*'s judgment, in *Clutton v. Pardon*, Turn. & Russ. 301, it is perhaps difficult to see exactly what is meant by the words 'pressing necessity.' But in *Postlethwaite v. Blythe*, 2 Swanst. 256, he states the principle more generally:—"I take it," he says, "to be contrary to the whole course of proceeding in this Court, to compel a creditor to part with his security till he has received his money. Nothing but consent can authorize me to take the estate from the plaintiff before payment." That was the case of a mortgage, but the rule applies equally to the case before me.

"It may, doubtless, be a great inconvenience and hardship on the client to be kept out of possession of his documents till the balance of the account be ascertained; and this seems to be a case in which there ought to be no objection, on the part of the defendant, to deliver up the documents, on an ample security for his demand being brought into Court. But, nevertheless, as a matter of right, I cannot refuse to discharge this order.

"There was certainly, as to one of the policies to which the lien applied, a pressing necessity for its being delivered up, in order to obtain payment of the money due upon it; and, in such a case, it would undoubtedly be the duty of the Court to take care that the solicitor's lien should not occasion the loss of the property. But that might have been provided for, by ordering that policy only, to be delivered up, for the purpose of obtaining payment, and by directing that the proceeds of it, when received, should be paid into Court." *Richards v. Platel*, 1 Craig. & P. 79.

MOOT POINTS.

DEVISE TO "LAWFUL HEIRS."

J. B., by his will dated 13th May, 1813, and executed in the presence of three witnesses, proceeded as follows: "I, *J. B.*, make and declare this my last will and testament. After all my just and lawful debts are paid, I give and bequeath my lands and houses in Yorkshire to my brother, *R. B.*, and his *lawful heirs.*" I should feel particularly obliged if any correspondent would inform me what estate *R. B.* took in the devised premises; and also if he will point out a case applicable to the above, if one has been decided.

A SUBSCRIBER.

BURIAL SERVICE.

Can a clergyman of the Church of England prevent the burial of a person belonging to the parish, in the parish church-yard, on the ground of the service of the Church of England being objected to, and not required, and, in fact, where no service is performed?

A. B.

LUNATIC'S LIABILITY.

A. borrows of *B.* two sums, amounting to 80*l.*, for which *A.* gives an undertaking to repay, but within a week after the loan is made, *A.* is discovered to be lunatic under the guardianship of his brothers, although at large: *B.* was aware that two years previous to the lending of the money *A.* had been confined in a lunatic asylum, but was discharged cured. He is now a second time confined in an asylum. Against whom will an action lie, or upon whom can *B.* make his claim for the amount? It will be observed that *A.* had been at liberty, and had been considered sane for two years previous to, and at the time of the lending.

L. S. D.

DOWER OF EQUITY OF REDEMPTION.

The letter of *A. M. C.*, *ante*, 409, seems to suggest a difficulty, which, in fact, has no actual existence; for if the late dower act really alters the law with respect to equities of redemption, it certainly empowers the husband alone to preclude his wife from any claim of dower therein. However, in the instance stated, I do not think the act applies. The section referred to enacts, "that when a husband *shall die* beneficially entitled, &c."—but if the husband and mortgagee together make an absolute conveyance, I apprehend there will remain nothing for this part of the statute to operate upon; and indeed as another section (sec. 6.) enacts, "that a widow shall not be entitled to dower out of any land of her husband, &c., when by *any deed executed by him* it shall be declared that his widow shall not be entitled to dower out of such land." I do not perceive any necessity for obtaining the concurrence of the obstreperous lady alluded to.

A. E. F.

MISCELLANEA.

OFFENCES COMMITTED IN DRUNKENNESS AND PASSION.

"It is erroneous to assert, as is often done, that an offence committed in a state of drunkenness is similar to one committed in a passion; for, if we compare these two conditions, we shall soon observe, that passion has an internal, and drunkenness an external cause. One, who is subject to the influence of passion, has yielded to his strong feelings, and allowed them a dominion over his life, which denies or weakens the deterring representations of the law; it is through his own fault, that the angry man becomes inflamed with rage, since he might have withstood the first movements of his passion: and, besides, every fit of passion has its root more or less in a previously existing appetite or passion, and a crime committed therein is always in greater or less degree the product of premeditated selfish motives. When an angry man kills his enemy who has injured him, in this case, there are circumstances preceding the passion, which excite to crime, and which are conflicting, in the soul of the actor, with the idea of the wickedness of the act, and of the punishment provided by the law; while a drunken man, on the contrary, commonly acts without reference to the relations which precede his drunkenness, and kills perhaps his best friend, who merely endeavours to withstand the outbreak of his fury.

"He who acts in a passion is always obnoxious to the reproach of fault, since the passion excited in the particular case is only the product of an already existing disposition of soul, in consequence of the actor's having too frequently yielded to his passion, and lost command over himself. He is justly liable to the reproach of fault, too, for the further reason, that he is not only acquainted with his own propensity to get in a passion, but he also knows what are the consequences of anger, which, in its very nature, leads to the doing of evil to those by whom we have been injured; whereas drunkenness may be wholly inculpable, as, for example, when one does not know the intoxicating quality of the liquor by which he is made drunk: neither is drunkenness in itself a condition, which makes every drunken man inclined to commit crimes, for it frequently induces a remarkable serenity of temper; and it may be, that the drunken man, from his former experience of himself, knows that he is perfectly harmless and peaceable when drunk, and is therefore inclined to look upon the condition of drunkenness with feelings of indifference. It cannot be said either that the drinker ought not to have drunken; for drinking in itself is not forbidden, and is frequently occasioned by some sudden change or extraordinary circumstance, of which the drinker himself is not conscious; and drunken-

ness may even arise from a condition of calmness and social enjoyment, which is far from blameable. If we compare an offence committed in a fit of passion with one committed in a state of drunkenness, the distinction cannot escape observation, that in passion there is always some degree of consciousness remaining, and that the actor knows what he is doing, and its consequences, and hears the deterring voice of the law: whilst drunkenness renders the subject of it unconscious of his actions, and in so far, constitutes a condition analogous to that kind and degree of mental disorder, which excludes imputability. From the foregoing considerations, it is easy to conclude, that the opinion of those, who would make an offender responsible in the same degree, and punishable in the same manner, for a crime committed in drunkenness, as for one committed in a sober condition, is wholly groundless."

[From the *Cabinet Library of Scarce Tracts*.]

ASSESSMENT OF A FIFTEENTH, 29 EDW. 1.

"Roger, the dyer had, on Michaelmas day last, in his treasury or cupboard, 1 silver buckle, price 18*d.*; 1 cup of mazer (maple,) pr. 18*d.*: in his chamber, 2 gowns, pr. 20*s.*; 2 beds, pr. half a mark; 1 napkin, and 1 towel, pr. 2*s.*: in his house, 1 ewer with a bason, pr. 14*d.*; 1 handiron, pr. 8*d.*: in his kitchen, 1 brass pot, pr. 20*d.*; 1 brass skillet, 6*d.*; 1 brass pipkin, 8*d.*; 1 trivet, pr. 4*d.*: in his brewhouse, 1 quarter of oats, pr. 2*s.*; woud ashes, pr. half a mark; 1 great vat for dying, 2*s.* 6*d.*; item, 1 cow, pr. 5*s.*; 1 calf, pr. 2*s.*; 2 pigs, pr. 2*s.*, each 12*d.*; 1 sow, pr. 15*d.*; billet wood and faggots for firing, pr. 1 mark.

"Sum 7*l.* 5*s.*, fifteenth of which 4*s.* 9*d.*"

[From the *History of Colchester*, p. 73.]

MASTERS EXTRAORDINARY IN CHANCERY.

From 24th August, to 17th September, 1841, both inclusive, with dates when gazetted.

- Brown, Charles Joshua, Ilminster. Sept. 14.
 Carlyon, Edmund, Truro. Aug. 31. §
 Carlyon, Edward Trewbody, Truro. Aug. 31.
 Evans, Charles, Worcester. Aug. 24.
 Gutch, John James, Melton Mowbray, Leicestershire. Sept. 7.
 Huish, John, Derby. Aug. 24.
 Landon, Francis Newcombe, Brentwood, Essex. Sept. 10.
 Matthews, George, Newtown, Montgomeryshire. Sept. 10.

BANKRUPTCIES SUPERSEDED.

From 24th August, to 17th September, 1841, both inclusive, with dates when gazetted.

- Bonner, James, and Charles Gibbons, Thame, Oxford, Furniture Brokers and Brick Makers. Aug. 27.
 Hardy, James, Wednesbury, Stafford, Iron Master. Aug. 24.

DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

From 24th August, to 17th September, 1841, both inclusive, with dates when gazetted.

- Churchyard, Meadows, and Everitt, Woodbridge, Suffolk, Attorneys and Solicitors. Sept. 17.
 Fox, John, and Alfred Hurst Lowe, Nottingham, Attorneys and Solicitors. Sept. 7.
 Griffiths, Henry Moore, and Edmund Gilpin, Birmingham, Attorneys and Solicitors. Sept. 7.
 Hulme, James Hilton, and Andrew, William, Manchester and Salford, Lancashire, Attorneys, Solicitors, and Conveyancers. Sept. 3.
 Jacomb, William, and Tindale, John, Huddersfield, Yorkshire, Attorneys and Solicitors. Sept. 3.
 Rutter, John Simpson, and Charles Corner, Wolverhampton, Stafford, Attorneys and Solicitors. Aug. 27.
 Sperling, James Moss, and George Pinckard Arden, Halstead, Attorneys and Solicitors. Sept. 10.

BANKRUPTS.

From 24th August, to 17th September, 1841, both inclusive, with dates when gazetted.

- Allies, Edward, Alfrick, Worcester, Timber Merchant and Coal Merchant. *White & Co.*, Bedford Row. Aug. 24.
 Burgon, Thomas, Walbrook Buildings, London, Merchant. *Whitmore*, Off. Ass.; *Kirkman*, King William Street, City. Aug. 27.
 Bentall, Henry, 18, Cecil Street, Strand, London, Coal Merchant and Wine Merchant. *Whitmore*, Off. Ass.; *Austin*, 37, Threadneedle Street. Aug. 31.
 Beales, Thomas Frederick, and Beales, John Edward, Manchester, Lancashire, Dry Salters. *Taylor & Co.*, 41, Bedford Row, London; *Burdett*, 5, Maraden Street, Manchester. Aug. 31.
 Barlow, Thomas, Manchester, Shoe Dealer. *Wilson & Co.*, Kendal; *Addison*, 8, Mecklenburgh Square, Middlesex. Sept. 7.
 Brown, Thomas, and Benjamin Brown, of Wakefield, Yorkshire, Linen Drapers, Hosiers. *Sale & Co.*, Fountain Street, Manchester; *R. M. & C. Baxter*, Lincoln's Inn Fields, London. Sept. 10.

- Buckley, John, Joseph Buckley, and Henry Buckley, Manchester and Todmorden, Lancashire, Cotton and Worsted Manufacturers. *Sale & Co.*, Fountain Street, Manchester; *R. M. & C. Baxter*, Lincoln's Inn Fields. Sept. 10.
- Bailey, John, Burslem, Stafford, Innkeeper. *Smith*, 48, Chancery Lane, London; *Harding*, Burslem. Sept. 14.
- Caton, William, Preston, Lancashire, Ironmonger. *Bower & Co.*, 46, Chancery Lane; *Price & Co.*, Wolverhampton. Sept. 7.
- Daniell, Charles, 315, Oxford Street, Middlesex, Jeweller. *Cannan*, Off. Ass.; *Newdon & Co.*, Wardrobe Place, Doctor's Commons. Aug. 31.
- Dyson, Abraham, Sheffield, Yorkshire, Plater on Steel and Cutler. *Wilson*, 6, Southampton Street; *Wilson*, Sheffield. Aug. 31.
- Dawson, Robert Lee, and Patrick Vance, Liverpool, Merchants. *Clay & Co.*, Liverpool; *Adlington & Co.*, Bedford Row, London. Sept. 3.
- Davies, Richard, of Pillgwenlly, Newport, Monmouthshire, Steam Coal, Bar Iron, and Commission Merchant. *Adlington & Co.*, 1, Bedford Row, London; *Cross*, 2, Clare Street, Bristol. Sept. 3.
- Davies, Richard, and Ebsworthy Fapson, late of Pillgwenlly, Newport, Monmouthshire, Ship Brokers and General Merchants. *Adlington & Co.*, 1, Bedford Row, London; *Cross*, 2, Clare Street, Bristol. Sept. 14.
- Davies, John, and Frederick Dickerson, Plymouth, Merchants. *Surr*, 80, Lombard Street, London; *Lockyer & Co.*, 9, Princes Street, Plymouth. Sept. 14.
- Fretwell, William, Leeds, Colonial Merchant. *Wigleworth & Co.*, 5, Gray's Inn Square, London; *J. & H. Richardson*, Leeds. Sept. 10.
- Forster, George, Newcastle-upon-Tyne, Woollen Draper, Silk Mercer. *Currie & Co.*, 3, New Square, Lincoln's Inn, London; *Hewson*, Grey Street, Newcastle-upon-Tyne. Sept. 17.
- Gillies, James, Hartlepool, Durham, Ship Owner and Merchant; *Swain & Co.*, Old Jewry; *Messrs. Wright*, Sunderland. Aug. 24.
- Hodgson, Robert, Leeds, Merchant. *Jaques & Co.*, 8, Ely Place, London; *Kidd*, Holmfirth. Sept. 10.
- Howell, Benjamin, Oxford Street, Middlesex, Linen Draper. *Aluager*, Off. Ass.; *Turner & Co.*, Basing Lane, London. Sept. 17.
- Jubber, James Morris, Oxford, Wine Merchant. *Turner & Co.*, Basing Lane, London; *Looher*, Oxford. Aug. 27.
- Jeffery, Edward, High Street, Exeter, Builder. *W. & J. S. Kingston*, 5, Upper Southernhay, Exeter; *Moseley & Co.*, Bedford Street, Covent Garden, London. Aug. 31.
- Jowett, Joseph, Northside, Bethnal Green, Middlesex, Wine Cooper, Bottle Merchant. *Cannan*, Off. Ass.; *Vanandun & Co.*, King Street, Cheapside. Sept. 3.
- Jupp, Spencer, Littlehampton, Sussex, Corn Merchant. *Balchin*, Arundel; *Freeman & Co.*, 39, Coleman Street. Sept. 17.
- King, John Brinkley, Old Broad Street, London, Carpenter and Builder. *Cannan*, Off. Ass.; *Hine & Co.*, Charterhouse Square. Aug. 24.
- Kipping, Henry, Maidstone, Kent, Broker. *Cannan*, Off. Ass.; *King*, 5, Verulam Buildings, Gray's Inn Square. Sept. 3.
- Law, Wm. Ingham, Manchester, Chemist and Druggist. *Mayhew & Co.*, Carey Street. *Blackhurst & Co.*, Preston. Aug. 27.
- Littleford, Joseph, High Street, Marylebone, Coach Maker; *Groom*, Off. Ass.; *Goren*, 29, South Molton Street. Sept. 10.
- Lamont, John, and John David Stewart, and John Mattravers, Skinner Street, Bishopsgate, London, Brewers. *Groom*, Off. Ass.; *Bryan*, 21, Old Jewry. Sept. 14.
- Midlane, John, jun., Brading, Isle of Wight, Ironmonger and Coal Merchant. *Messrs. Hearn*, Newport, and Ryde; *Fosters & Co.*, John Street, Bedford Row. Aug. 24.
- Muirhead, George, Oxford Street, Middlesex, Tailor and Draper. *Whitmore*, Off. Ass.; *Huson*, Old Jewry. Aug. 27.
- Morris, David William, Tredegar, Monmouth, Draper. *Desborough & Co.*, Size Lane, Bucklebury; *Pruthero & Co.*, Newport. Aug. 27.
- Molineux, John, the elder, Liverpool, Professor of Music and Music Seller. *Vincent & Co.*, 9, King's Bench Walk, Temple, London; *Deane*, Harrington Chambers, North John Street, Liverpool. Sept. 7.
- Molyneux, Thomas Blayds, and Percival Witherby, Liverpool, Merchants. *Lowndes & Co.*, Liverpool; *Sharpe & Co.*, 41, Bedford Row. Sept. 10.
- Mais, John Caspar, 26, Lime Street, London, Merchant. *Aluager*, Off. Ass.; *Overton & Co.*, Old Jewry, London. Sept. 14.
- Mill, Jacob, Crosby Hall Chambers, Bishopsgate Street Within, London, Merchant. *Aluager*, Off. Ass.; *Oliverson & Co.*, Frederick's Place, Old Jewry. Sept. 17.
- Nesbitt, Andrew Abercrombie, Leeds, Yorkshire, Stuff Merchant. *Battye & Co.*, 20, Chancery Lane; *Lae & Co.*, Leeds. Aug. 31.
- Nesbitt, Andrew Abercrombie, Leeds, Stuff Merchant. *Battye & Co.*, 20, Chancery Lane; *F. & J. Lee*, Leeds. Sept. 7.
- Parker, Francis, Masbrough, and Ickles Mills, Rotherham, York, Seed Crusher and Oil Merchant. *Taylor*, John Street, Bedford Row; *Hoyle*, Rotherham. Aug. 24.
- Phelps, Robert, Tewkesbury, Gloucester, Scrivener. *Church*, Bedford Row; *Chandler*, Tewkesbury. Aug. 24.
- Potter, George, and Samuel Potter, Manchester, and Birkacre, Calico Printers. *Sale & Co.*, 76, Fountain Street, Manchester; *Messrs. R. M. & C. Baxter*, 48, Lincoln's Inn Fields, London. Sept. 7.
- Potter, George, and Samuel Potter, and John Krauss, Manchester, and of Birkacre, near Chorley, Lancashire, Calico Printers. *Milne & Co.*, Temple, London; *Milne & Co.*, Manchester. Sept. 7.
- Pilling, William, Droylsden, Lancashire, Manufacturer of Cotton Goods. *Adlington & Co.*,

- Bedford Row, London; *J. H. Law*, 84, King Street, Manchester. Sept. 10.
- Poulton, Joseph, the elder, Leominster, Herefordshire, Builder. *Smith*, 48, Chancery Lane, London; *Hannond*, Leominster, Herefordshire. Sept. 14.
- Potter, Richard, late of Glasborne Park, Yorkshire, but now of Birkeacre, near Chorley, and of Manchester, Lancashire, John Potter, of Manchester, and James Potter of Manchester, Cotton Spinners and Manufacturers. *Makinson*, Elm Court, Middle Temple, London; *Atkinson & Co.*, Norfolk Street, Manchester. Sept. 17.
- Robinson, Richard, Low Lights, North Shields, Tynemouth, Northumberland, Brewer. *Holme & Co.*, New Inn; *Tinley*, North Shields. Aug. 24.
- Richardson, William, Kingston-upon-Hull, Joiner and Builder, *Rosser & Co.*, Warwick Court, Gray's Inn; *England & Co.*, Hull. Aug. 27.
- Reynolds, John, the elder, and Reynolds, John, the younger, Dowgate Dock, Upper Thames Street, London, Drysalers. *Whitmore*, Off. Ass.; *Dimmock*, Sise Lane, Queen Street. Sept. 3.
- Richardson, Thomas, Manchester, Tobacconist. *H. G. Deane*, 103, Chancery Lane, London; *Forshaw & Co.*, Orange Court, Castle Street, Liverpool. Sept. 7.
- Rowland, Daniel, Horsham, Sussex, Linen Draper. *Grooin*, Off. Ass.; *H. W. & W. C. Sole*, 16, Aldermanbury. Sept. 17.
- Ragg, Thomas, late of Bristol, Hosier, but now of Birmingham. *Chaplin*, 3, Gray's Inn Square; *Standbridge*, 25, Ann Street, Birmingham. Sept. 17.
- Short, George, jun., Salisbury, Wilts, Grocer. *Murray*, New London Street, Fenchurch Street, Aug. 24.
- Scott, John, Brick Hill Lane, Upper Thames Street, London, Merchant. *W. Whitmore*, Off. Ass.; *Crosby & Co.*, Old Jewry. Aug. 31.
- Spence, Michael, of Holbeck, Leeds, Cloth Dresser. *Wilson*, 6, Southampton Street, Bloomsbury Square, London; *Payne & Co.*, Leeds. Sept. 10.
- Saunders, John, James Fanner, and Thomas Hosier Saunders, Basinghall Street, London, and of Bradford, Wilts, Woollen Manufacturers. *Edwards*, Off. Ass.; *Ashurst*, 137, Cheapside, London. Sept. 14.
- Troughton, John Ellis, Saint Michael's Alley, Cornhill, London, Merchant. *Cannan*, Off. Ass.; *Messrs. Freshfields*, New Bank Buildings. Aug. 27.
- Thompson, Henry, Nafferton Mills, near Driffield, York, Corn Miller and Malster. *Adlington & Co.*, Bedford Row; *Taylor & Co.*, Wakefield. Aug. 27.
- Taylor, Joseph, Ipswich, Grocer and Tea Dealer. *Litchfield & Co.*, 89, Chancery Lane; *Pownall*, Ipswich. Sept. 3.
- Tonia, Samuel Rogers, Maiden Lane, Cheapside, London, but now of Bow Church Yard, Cheapside, Commission Agent and Warehouseman. *Hadfield*, 38, Fountain Street, Manchester; *Cooper & Co.*, Brown Street, Manchester; *Johnson & Co.*, 7, King's Bench Walk, Temple. Sept. 10.
- Willson, James Lewis, and William Allen Turner, Wood Street, Cheapside, London, Warehousemen. *Cannan*, Off. Ass.; *Reed & Co.*, Friday Street, Cheapside; *Sale & Co.*, Manchester. Aug. 27.
- Williams, Joseph Baynton, Bristol, Wholesale and Retail Ironmonger. *Hicks & Co.*, Bartlett's Buildings; *Wellington*, Bristol. Aug. 27.
- Williamson, Joshua, Nicholas Lane, Lombard Street, London, Merchant. *Cannan*, Off. Ass.; *Oliverson & Co.*, Old Jewry. Aug. 31.
- Worinton, Thomas, of Burbage, Leicestershire, Hosier, Baker and Grocer. *Holme & Co.*, 10, New Inn; *Weston*, Cank Street, Leicester. Sept.
- Walker, William, and John Walker, Saint John's Square, Clerkenwell, Middlesex, and of Mosley Street, Manchester, Manufacturers of Apparatus for Heating Buildings. *Alagar*, Off. Ass.; *Armstrong*, 33, Old Jewry. Sept. 10.
- Williams, George, Aldgate, London, and New Kingston, Surrey, Linen Draper. *Edwards*, Off. Ass.; *Ashurst*, 137, Cheapside. Sept. 17.
- Walker, Richard Rhodes, and Robert Joseph Peel, Manchester, Scotch and Manchester Warehousemen. *Sale & Co.*, Fountain Street, Manchester; *R. M. & C. Baxter*, Lincoln's Inn Fields. Sept. 17.

PRICES OF STOCKS.

Tuesday, Sept. 21, 1841.

3 per Cent Consols Annuities	-	-	89½	a	½	a	½
New 3½ per Cent. Annuities	-	-	98½	a	½	a	½
India Bonds, 3½ per Cent.	-	2s.	a	1s.	a	4s.	pm.
3 per Cent. Cons. for account 14th Oct.	89½	a	½	a	½	a	½
Exchequer Bills 1000 <i>l.</i>	a	2½ <i>d.</i>	15s.	a	12s.	a	15s.
Ditto 500 <i>l.</i>	do.	15s.	a	13s.	a	16s.	pm.
Ditto Small	do.	14s.	a	16s.	a	17s.	pm.

The Legal Observer.

SATURDAY, OCTOBER 2, 1841.

— "Quod magis ad nos
Pertinet, et nescire malum est, agitamus.

HORAT.

PARLIAMENTARY NOTICES.

THE session of parliament will soon close, and it will be memorable only for the New Equity Judges Bill, which has passed the House of Commons, and will very soon become the law of the land. We shall thus, in the approaching Michaelmas Term, have five Equity Judges ready for the dispatch of business. This will be no little help to the new Lord Chancellor, and we cannot but believe that the judicial power will be not only sufficient to dispose of the existing arrears, but to keep them down for the future. Indeed, from some recent indications, it may be possible that there may not be sufficient business to keep all five Courts permanently at work. But should this be so, it is better that a Judge should be under-worked, than over-worked; and that there should be Judges without suitors, rather than suitors without Judges. Besides, the evil cannot be of long continuance, as on any vacancy occurring, the place is not to be filled up, except on application to parliament. We hope, however, among the new regulations for the disposal of equity business, there will be some cheaper mode devised of hearing points of equity practice. We hope to see either an Equity Practice Court established, or some arrangement similar to that which now takes place at common law, before a Judge at chambers. With a mass of New Orders to work, some such arrangement as this is indispensable. The power to make the necessary regulations in this respect, is clearly given by stat. 3 & 4 Viet. c. 94, (printed 21 L. O. 310), amended by statute 4 & 5 Viet. c. 52 (printed *ante*, p. 376).

We regret to find that in consequence of the debate which took place in the House of Commons on the subject, Mr. Vizard has resigned his situation as solicitor to the Home Office. At the time that this ap-

pointment was made, and came under discussion, we gave our reasons in support of the appointment (see *ante*, p. 436), and we have seen no cause for changing our opinion. We think it is for the advantage of the public that the Home Office should have the advice of an experienced solicitor; and we think it also for its advantage that that branch of the profession, as a body, should be encouraged by the bestowal of appointments of this nature on its more distinguished members.

The improvements as to the disposal of private business in the House of Commons, are going on satisfactorily. Mr. Greene has been placed in the chair of the public committees, with this alteration, that he will not only take the chair on government bills, but, as we understand, on the bills of private members. This was highly necessary, for it was a considerable hindrance to any individual member, having the conduct of a bill, to have to find a member able and willing to act as chairman. A further improvement will be found in the following resolutions, which have been made on the motion of Mr. Greene:

That all standing orders regulating the practice of the House, and of the Private Bill Office, with reference to estate and name bills, be, during the present session, suspended. That all such bills, during this session, be after their second reading referred to a select committee. That such committee do consist of the following members: Mr. Greene, Mr. Eatcourt, Mr. Aglionby, Mr. Tatton Egerton, and Mr. Walker. That three be the quorum.

Our readers will remember that in the two preceding sessions divorce bills were referred to a select committee, consisting wholly of impartial members. We have here the same rule adopted with respect to estate and name bills; and we do not doubt that eventually the same course will be adopted with respect to all private bills.

PRACTICAL POINTS OF GENERAL INTEREST.

AGE.

The following case may be interesting to some of our readers:—

A testator appointed two persons to be the executors of his will, and to be the guardians of his adopted daughter, M. H. Grant, "whose property I wish to be paid into her own hands on the day she attains her twenty-fifth year, and not till then." M. H. Grant was twenty-four years old on the 11th September, 1840. The question was whether she had attained her twenty-fifth year.

Mr. Temple.—Attaining such a year means attaining a complete year, as for instance, attains twenty-one.

Alderson, B.—You mean twenty-one years?

Alderson, B.—She attained her twenty-fifth year on the 11th of September, 1840, when she became twenty-four years old. *Grant v. Grant*, 4 Yo. & Col. 256.

THE LAW RELATING TO JOINT-STOCK COMPANIES.

LIABILITY OF DIRECTORS.

THE following case, although somewhat special in its circumstances, is not without its general bearing on joint-stock companies, especially as to the appropriation of shares by directors, under peculiar circumstances.

Certain persons agreed, in 1832, to form a society to be called "The Society for the Illustration and Encouragement of Practical Science," and in October, 1834, they obtained a charter for that purpose, by which they, "together with such other persons as had become, or should at any time thereafter become subscribers to the capital or stock thereafter mentioned," were incorporated under the name aforesaid, with perpetual succession and a common seal, and it was thereby declared that the capital of the society should be the sum of 20,000*l.*, divided into four hundred shares of 50*l.* each. At the time of granting the charter, Abbott, Brickwood, Shaw, and Watson, were the only persons who then held any shares in the society, but Telford and Giles had promised to take five shares each, if the charter was granted. Soon after the granting of the charter, Abbott, Brickwood, Shaw, and Watson caused to be prepared 400 shares of 50*l.* each, amounting together to 20,000*l.*; and they agreed to appropriate the whole number equally among themselves, and to resell the same, or so many thereof as they might think proper for their own private benefit, charging themselves with the whole capital of 20,000*l.*, directed by the said charter to be subscribed by the proprietors of the said

society. From the incorporation of the society until February, 1835, Abbott, Brickwood, and Shaw, together with Watson, down to his death, managed all the affairs of the society in a private manner, without any interference on the part of Telford or Giles, or any other person. Telford died soon after the charter of incorporation had been granted, and soon after Abbott, Brickwood, Shaw, and Watson transferred to Telford's executors five shares in the society for 250*l.*, and also transferred other five shares to Giles for a like sum, which two sums they appropriated to their own use, and they also sold other shares to other parties, and appropriated all the money to their own use. A bill was filed by the corporation alleging that the full consideration of 20,000*l.* was not paid by Abbott, Brickwood, Shaw, and Watson, and praying that an account might be taken of what they ought to have paid, and for payment of the amount. A demurrer for want of equity was filed. It was distinctly stated in the bill that the only persons who were interested at the time of the charter being granted, were the four persons named, and it was accordingly contended in support of the demurrer, that they had the right to do what they pleased with respect to that which was to become the property of this corporation, that is, in respect of these shares, and that, if on the one hand they had the power of incurring responsibility, they had on the other hand, the power in that way of discharging themselves from it. "I confess" said Lord Langdale, M. R., "I cannot concur in that argument. They were then the only members of the corporation, and taking it for the present, that being such only members, they had a right to do what they pleased with the property of the corporation, without proceeding to the extent of destroying the corporation; yet had they a right to act in a manner totally inconsistent with this charter of incorporation, and at the same time continue to act as if the charter of incorporation were valid—to hold out to the world that it was valid, and to sell shares upon that supposition? I apprehend they were bound to look to the continuance of the corporation, and to the conditions and terms on which it was originally founded; and that, in continuing it, they could not discharge themselves from the liability of the conditions affecting the rights of all who might afterwards become members of the corporation. A man with regard to his own estate may act as he pleases; he may, as it has been said in argument, take from one pocket and put into another; but that is not the case with these persons. They were the only managers and the only members of the corporation, and what is alleged upon this bill is, that they determined to become the owners of all the shares; their right to do so is not disputed by the plaintiffs, but what they say is this, 'you might, if you pleased, have become the owners of all the 400 shares, but if the corporation was to continue, then you were bound to give to the corporation to the value of those shares, or 20,000*l.*, but you have not done so.' This is the question to be determined in this cause.

The defendants, on their part, say we have laid out money in the purchase of models, furniture, &c.; in the alteration of the premises, and in carrying on the undertaking, until we had established and made it very valuable; our outlay and expences amounted to 16,000*l.*, we have added 4,000*l.*, and by delivering the models, &c. to the corporation, and by paying the 4000*l.*, we have become the purchasers of 400 shares. If the facts were so, it is not disputed by the plaintiffs that the transaction was right, but the truth of that allegation cannot be brought into discussion upon this demurrer. The plaintiffs allege by the bill that the expenditure did not amount to the 16,000*l.*, and if not, the result simply is, that the amount of the expenditure together with the 4000*l.*, which was the whole consideration paid for the 400 shares, was much less than their value. It is distinctly stated by the bill, that the four persons bought the whole 400 shares from the corporation, that they as individual members of the corporation, acquired them, without, according to the allegation in this bill, having paid into the corporation fund the value of them." The demurrer was accordingly overruled. *The Society of Practical Knowledge v. Abbutt*, 2 *Bea*. 559.

MAKING CALLS.

We have already collected the cases relative to making calls, (see 20 *L. O.* 273). We now add the following:

By the 121st section of the 6 & 7 *W. 4*, c. cv, the directors of a railway company were empowered to make calls, the aggregate amount not to exceed 100*l.*, and no call to exceed 10*l.* upon each share, and an interval of three calendar months was to elapse between the days of payment of each call. It also required that twenty-one days' notice should be given of every call by advertisement in certain newspapers, and enacted that all money so called for, should be paid to such persons at such times and places as in the said notice should be appointed. A resolution of the directors was made for a call of 8*l.* per share, but the resolution, although it mentioned the period within which the call was to be paid, did not specify the place where, or person to whom, the payment was to be made. The notice of that call inserted in the local newspapers, according to the directions of the act, specified the time and place of payment, and the person to whom the payment was to be made; and it was held, first, that the publication of the notice must be assumed to be the act of the directors; and secondly, that the call was properly made. "By the 121st section," said Mr. Baron *Parke*, "the directors are empowered to make such calls for money, &c. as they from time to time shall find necessary, and it is enacted that the aggregate amount of calls shall not exceed 100*l.*, and that no call shall exceed 10*l.* upon each share, and an interval of three calendar months is to elapse between the days of payment of each call. Now there is not one word in this enactment requiring that the place of payment or person to whom the payment is to be made,

shall be named at the making of the call. That section then proceeds to provide that twenty-one days' notice shall be given of every call, by advertisement in certain newspapers therein mentioned, and enacts that all money so called for shall be paid to such person and at such times and places as in the said notice shall be appointed." The notice, therefore, must contain those requisites. In this instance the notice does state the time and place of payment, and in other respects complies with the act of parliament. Assuming, therefore, the resolution to be the act of the directors, I think that the call in question was properly made." *Great North of England Railway Company v. Biddulph*, 7 *Mec. & W.* 243.

THE LAW OF CLUBS.

Mr. WORDSWORTH has just published an able pamphlet on "Societies called Clubs," in which he sums up the recent cases on the subject, and gives the following as the result:

"The committee of a club are the agents of the members at large. The latter are not bound by the acts of the former if they exceed their authority as agents. The extent of that authority is to be found in the constitution of the club, which is composed of a set of rules, or conditions, agreed to at the formation of the club. In general, as rules are ordinarily framed, they do not, by construction of a court of law, empower the committee to deal upon credit. Nothing short of a clear and express provision to that effect, in the rules, will be binding upon the members. In the absence of such a provision, the committee must deal for ready money, to be drawn by them from the members' subscriptions, which make a fund for the general purposes of the institution. The moment that fund is found to be inadequate to the current expences of every description whatsoever, the committee should call the members together and get further subscriptions; or, do one of two things—resign their offices of committee-men, or, resolve to carry on the club upon credit. The responsibilities of a committee, paying ready money, are confined to the proper administration of the current funds, and the exercising of a vigilant superintendence over the disbursements, taking care that the former are equal to the latter. As was said by *Tindal, C. J.*, in addressing the jury on the trial last discussed, 'if persons choose of their own accord to act as committee-men, and to put their names upon the committee, they ought not to neglect their duty. It is their own fault if they afterwards become liable. There is always a course which may be pursued, and which I think ought always to be adopted in institutions of this kind, and which would keep committee-men secure from danger, and that is, not to have or sanction, any contract between the committee and the tradesmen, except on payment of ready money, for then, if the defendants could have shewn that Chapman, their

steward, was always armed with a purse, and always dealt with tradesmen for ready money, and that such was the constant course of dealing, no such contract as the present could have been made." That is, the defendants would not have been liable.

"If, on the other hand, the committee choose to deal upon credit, they must pay out of their own pockets, if the funds of the club in their hands prove insufficient. The liability incurred in such a case is as between the committee and the tradesmen; and if the committee be compelled to pay, they have no right to seek for contribution from the members at large, if it be clear from the rules of the club, that the committee were merely to distribute the funds, and not to deal upon credit. But as between the several members of the committee each is liable to the others if the liability be a joint one. That is, if all concurred in making the contract, but only two are sued upon and compelled to perform it, these two may seek for contribution from the other committee-men. It is seldom, however, that all the members of a committee are present together at one time, so that contracts may be entered into by some in the name of all—by some in the name of the committee at large. With respect to those not present, if it be sought to make them liable, either by the tradesmen or by their fellow committee-men, it should seem that their liability will only commence from the time when, by their expressions, conduct, and acts, they shall be taken to have 'consented and assented' to what was going on. It appears further, that in such a case as *Todd v. Emly*, the house-steward will be regarded as the agent of the committee. If they deal upon credit, and by the usual course observed in the club, the house-steward have given orders to the tradesmen, and paid their accounts from time to time, there will be no bounds to the committee's liability. Under such circumstances, he will be considered by a jury as authorized to pledge the credit of the committee."

The decisions cited or referred to in the course of the pamphlet are the following:—*Fleming v. Hector*, 2 M. & W. 179; *Ruggott v. Bishop*, 2 C. & P. 343; *Ruggott v. Musgrave*, *ibid.* 556; *Sharp v. Warren*, 6 Price, 141; *Delaunay v. Strickland*, 2 Stark N. P. 416; *Adams v. O'Brien* and *Adams v. Rippon*, 2 M. & W. 172; *Todd v. Emly*, Law Journal, July and August, 1841; *Gleester v. Hunter*, 5 C. & P. 62; *Eaton v. Bell*, 5 B. & Ald. 34; *Burke v. Smith*, 7 Bing. 705; *Pink v. Scudamore*, 5 C. & P. 71.

We stated the law on this subject, and reviewed most of these cases in vol. XIII, p. 481.

LAW OF LIBEL.

REPORT OF CRIMINAL LAW COMMISSIONERS.

[Continued from p. 348]

"Law of England.—We now advert to some of the provisions of the law of England relating

to this subject, so far as may be necessary to illustrate the remarks which we propose to add, and to elucidate and justify the enactments which we shall afterwards submit. In advertising to the law of England, we refer to an observation already made, that we labour under some difficulty from being confined to a very partial and narrow view of the general policy of the law concerning libels and other illegal communications. We may add that the provisions of the criminal law of England regarding these offences, are much less artificial and far less perfect than those which regulate the remedial branch of the law in respect of oral slanders. Whilst the latter are now modelled on sound principles to meet the exigencies of society, and rules have been at last established upon a beneficial adjustment of conflicting principles, the few provisions which concern criminal liability remain for the most part in their ancient inartificial state. It is not difficult to account for this state of things. With respect to slander, as the subject of a civil remedy, the frequency of suits induced the necessity of continual discussion of the subject, and the natural result has been that by slow degrees, and after great fluctuations and the lapse of many centuries, many rules and distinctions have been established conducive to practical experience, and the law presents a more systematic form than might have been expected. In respect of the criminal branch, the case has been widely different. The law in its ancient simplicity contained few regulations in the way of criminal restraint; many were not essential when few could write, and none as yet could print. The wider diffusion of the first rudiments of education among ranks to which learning was before unknown, the invention of the press, and the sweeping away of those restrictions by which its action was first fettered, are circumstances, from which material changes in the criminal branch of the law, might have been expected to result. Such, however, has not been the consequence, and the simple principle of penal restraint in respect of defamatory injuries, and the law by which they are prohibited, remains, with slight exception, what it was many centuries ago.

"In our observations upon the law of England we propose to adopt the order which we have already prescribed in remarking generally upon the principles peculiar to this class of offences.

"First, therefore, as to the nature, quality, and consequences of the prohibited communication. It will be seen from the authorities which we are about to adduce, that whilst the definitions of the offence recognized by the law of England are very extensive, the principles on which they are founded are peculiarly narrow, as regards one of the most important of the classes which this branch of the law includes: viz., that which concerns injury to personal reputation. It is to this class, therefore, that our attention has been chiefly directed; the provisions of the common and statute law in respect of irreligious, immoral, and seditious publications, seem to be based on

sound and satisfactory grounds, in respect of which but few remarks are requisite.

"We find among the authorities the following description of libel as a criminal offence. In Sir W. Blackstone's Commentaries, vol. iv. p. 151, the law is thus stated:—Of a nature very similar to challenges are libels, *libelli famosi*, which, taken in their largest and most extensive sense, signify any writings, pictures, or the like, of an immoral or illegal tenor, but in the sense in which we are now to consider them, are malicious defamations of any person, and especially a magistrate, made public by the printing, writing, signs or pictures, in order to provoke him to wrath, or expose him to public hatred, contempt, and ridicule. The direct tendency of these libels is the breach of the public peace, by stirring up the subjects of them to revenge, and, perhaps, to bloodshed. The communication of a libel to any one person is a publication in the eye of the law, and therefore the sending an abusive private letter to a man, is as much a libel as if it were openly printed, for it equally tends to a breach of the peace. For the same reason, it is immaterial with respect to the essence of a libel whether the result of it be true or false, since the provocation, and not the falsity, is the thing to be punished criminally, though, doubtless, the falsehood of it may aggravate its guilt and enhance its punishment." In a civil action, we

may remember a libel must appear to be false as well scandalous; for if the charge be true, the plaintiff has received no private injury, and has no ground to demand a compensation for himself whatever offence it may be, against the public peace, and therefore, upon a civil action, the truth of the accusation may be pleaded in bar of the suit. But in a criminal prosecution, the tendency which all libels have to create animosities, and to disturb the public peace, is the whole that the law considers. And, therefore, in such prosecutions, the only points to be inquired into are, first, the making or publishing of the book or writing, and, secondly, whether the matter be criminal; and if both these points are against the defendant, the offence against the public is complete.

"In Hawkins's Pleas of the Crown, book i. c. 78, the law is thus expounded:—

"Sec. 1. It seemeth that a libel in a strict sense, is taken for a malicious defamation, expressed either in printing or writing, and tending either to blacken the memory of one who is dead, or the reputation of one who is alive, and expose him to public hatred, contempt, or ridicule.

"Sec. 2. But it is said that in a larger sense, the notion of a libel may be applied to any defamation whatsoever, expressed either by signs or pictures, or by fixing up a gallows against a man's door, or by painting him in a shameful and ignominious manner.

"Sec. 3. And since the chief cause for which the law so severely punishes all offences of this nature, is the direct tendency of them to a breach of public peace, by provoking the parties injured, and their friends and families to acts of revenge, which it would be impossible to restrain by the severest laws, were there no redress from public justice for injuries of this kind, which of all others are most sensibly felt; and since the plain meaning of such scandal, as is expressed by signs or pictures, is as obvious to common sense and as clearly understood by every common capacity, and altogether as provoking as that which is expressed by writing or printing, why should it not be equally criminal?

"Sec. 4. And from the same ground, it further doth appear that it is far from being a justification of a libel, that the contents thereof

"The observation of the learned writer of the Commentaries, that the falsity of the libel may aggravate its guilt, and enhance the punishment, is remarkable, when it is considered, that upon the very principle on which the criminality of the offence is founded, truth is immaterial; and, consequently, no evidence can be admitted on either side, to show either the truth or the falsity of the alleged libel. Probably the rule at the time when the learned author wrote, was not so well settled on this subject, as it now seems to be. In the case of the *King v. Huggins*, 12. T. 1829, the Court refused to allow a defendant, who had been convicted of a libel imputing perjury, to read either his own affidavit, or that of any other person, setting forth circumstances which amounted to an assertion of the truth of the libel. And they said, that the utmost latitude that ever had been, or could be allowed to the defendant in such case, was to read his own affidavit, stating that at the time when he published the libel, he had reasons for believing, and did believe the contents of it to be true; that to go the length proposed, would be to allow the defendant to charge the prosecutor with perjury, and in effect to compel the Court to try him for that offence upon affidavits; and that the adoption of such a course, would place the prosecutor in a degree of peril and hardship, and would militate against the substantial principles of justice. 4 Black. Comm. (Mr. Ryland's edition) p. 150, in the note by the learned editor. The decision of the Court is strictly in conformity with the limited principle, on which the penal law of libel, as expounded by Mr. Justice Blackstone, professes to be founded,

viz., the tendency of the publication to disturb the public peace; but if this be so, it obviously follows, that the falsehood of a libel cannot, without injustice, aggravate its guilt, and enhance its punishment. For how can, it be known, whether the charge be true or false, if all evidence of the fact be excluded in practice, because in principle the fact is deemed to be immaterial? To enhance the punishment by reason of the falsity of the charge, would in itself, be a direct violation of the very fundamental principle of the law. To assume the falsity, whilst the party was excluded from proving the truth of the charge, would be to punish a man on a gratuitous assumption of guilt, without allowing him to make his defence,

are true, or that the person on whom it is made had a bad reputation, *since the greater appearance there is of truth in any malicious invective, so much the more provoking it is.*^b

"It has appeared to us, after attentive consideration, that the law of England, in thus making the criminal branch of the offence to depend on the tendency of the libel to provoke to a breach of the peace, is constructed on too narrow a basis. And we apprehend, that some incongruities which are to be found in the practical application of this branch of the law, are attributable to this defect.

"Although it be true, that the danger to the public peace is one ground for penal restraint, it is not, we think, an exclusive one. The injury to private reputation is beyond all doubt a sufficient ground of legal interposition for the protection of reputation, by giving a remedy in damages; and there seems to be no satisfactory reason why that protection should be so limited to civil reparation any more than there is in the case of mere spoliation of property. The law which gives a remedy in damages in respect of trespass to property, is confessedly insufficient for the protection of proprietors against the fraudulent abstraction of property; and in many instances severe penal restraints against malicious destruction or damage are deemed to be necessary, to the extent even of subjecting offenders to the penalty of transportation. Although it be not necessary to punish a malicious libeller, in respect of the destruction of private reputation, with so much severity, the law might justly be regarded as inconsistent and defective, which thus carefully protected property, but afforded no more than the mere civil remedy, in respect of wilful injuries to reputation. In the former case, the injury is made penal, simply because the giving a remedy by action, affords no adequate protection against injuries of a fraudulent or malicious nature, perpetrated, it may be, by offenders unknown, or, where known, irresponsible through poverty or other circumstances. But precisely the same reason, viz. the inadequacy of the civil remedy, suggests the expediency of also affording protection to private reputation, by the like means against malicious attacks so easily and frequently made by otherwise irresponsible authors.

"The law of England does not, however, recognize the injury to the private right of reputation, as a ground of penal restraint, but founds its prohibitions and penalties, mainly, if not wholly, on the ground of protection to the public peace, against those interruptions which injuries to reputation are so likely to

occasion. It will be seen from the definitions of the offence, and the authorities referred to, that this is the great, we may almost state, the exclusive, principle of the criminal law of libel. One important and direct consequence from the adoption of so narrow a principle is, that the truth or falsity of the matter published, becomes wholly immaterial. This in itself is a perfectly just deduction from the original principle. For, as a violation of the peace is as likely to result from a publication of that which is true, as of that which is false, to a law designed for effectuating that principle, the truth or falsity of the matter published must be indifferent.

"Conformably with this inference, the law of England excludes both parties, the prosecutor as well as the defendant, on a charge of personal libel, from adducing any evidence as to the falsity or truth of the charge. And in reference to the same principle, a defendant convicted of a personal libel is not permitted, even in mitigation of punishment, to shew that what he published was true. This again is a just deduction from the original principle. It is, however, to be emphatically observed, that it is one which is subject to the condition that no greater degree of punishment is to be inflicted on a convicted party, than ought to have been, or would have been inflicted, on the supposition that the matter published was true. A punishment adapted to that supposition, gives the defendant all the benefit which he could derive from actual proof. If, however, the punishment were not to be modified by that condition, if the rule were not strictly adhered to, of punishing merely for the offence against the public peace, without regard to the truth or falsity of the matter published—that is, if the truth or falsity were to be regarded as material, the rule would be inconsistent with its principle, and highly unjust. It would be inconsistent with principle, to make the punishment for an attempt to disturb the peace, to depend at all on a circumstance purely collateral; and it would be manifestly unjust, to make the punishment greater than it ought to have been, had the truth been proved, and at the same time to exclude the defendant from the benefit of such proof. Assuming, however, the principle to be respected, and the condition to be observed, the objection to the law would be, not that it was inconsistent or unjust, but simply, that it was founded on too narrow a principle. It is, however, here necessary to observe, that although evidence of the truth or falsity of the matter published, be properly excluded in reference to the principle on which the law of England is founded, viz., the protection of the public peace, yet that in some instances, such evidence cannot be excluded, without an inconvenient violation of other principles. For, assuming the law to be properly based on the principle of protection to the public peace, a class of cases must of necessity be recognized by the law, where the quality of the act must depend on the actual intention of the party who composes or publishes the alleged libel. This

^b In Dalton's Justice, 289, a libel is defined as tending to a breach of the peace. In Sir Baptist Hicks's Case, Hol. 224, it is called a provocation to a breach of the peace. In the case of the *King v. Summers*, Lev. 139, it was held to be cognizable before justices, because it tended to a breach of the peace. In the case of the *King v. Wilkes*, 2 Wils. 150, the Court of Common Pleas gave a judgment to the same effect.

happens in the case already used for the purpose of illustration, where a character is given of a servant. In this, and similar cases, the law, although founded on the narrow basis on which it proposes to stand, must still make the question of guilt or innocence to depend on the existence or absence of actual malice. This, however, is a question, in respect of which, the truth or falsity of the matter published is, if not conclusive, of high importance; and, therefore, although according to the avowed principles of the law of England, such evidence be immaterial as regards the tendency to disturb the public peace, it is yet most material in order to ascertain whether the defendant, be, or be not, within an important exception of that law.

"In order to illustrate this doctrine, let the case, already put as one of ordinary occurrence, be supposed:—*A.*, a trader, publishes that *B.* has swindled him out of a sum of money, under the pretence of dealing in the way of trade; *B.* causes *A.* to be indicted. It appears that *A.* has made the communication under such circumstances, that it was privileged in point of law, provided it were made *bond fide*, and whether in truth it was made *bond* or *malid fide*, is the sole question in the case. According to the existing law, evidence of the truth on the one hand, and falsity on the other, is excluded, and the jury are called upon to decide on *A.*'s motives, without knowing whether he stated what was true, or was guilty of a deliberate falsehood, with the malignant intention of destroying *B.*'s reputation. It is manifest, that in such a case, where *A.* must necessarily have known whether the fact was true or false, the issue must virtually depend on the truth or falsity of the fact. If *A.* published what was false, the fact must be decisive as to malignity of intention; if the fact were true, it cannot be doubted, that it would usually be decisive as to goodness of intention. Now, the law and justice of the case being clear, the only question is, whether that evidence, which can alone lead to a just and certain conclusion, shall be admitted or rejected. It appears to us, that to define what is just, and then to exclude evidence of what is just, is a strange anomaly. There are some few instances to be found, where, on grounds of collateral policy, particular evidence of a fact in issue is rejected; these cases, however, depend on grounds of general public policy, none of which are applicable to the present case. In all such instances, it will be observable that the evidence is excluded, by reason of some objection to the use of the evidence itself, on the ground that the using of it would be generally prejudicial, not on the ground that evidence to prove the issue itself ought to be excluded. The exclusion, therefore, does not involve what we cannot but regard as an inconsistency, viz, that a case should in point of law and justice, depend on a fact, evidence of which is altogether excluded. We refer to some examples of the exclusion of particular evidence on special grounds of policy, to shew, that these can have no application, even by

remote analogy, to the present case. On grounds of general policy, neither a husband nor wife can give evidence for or against each other: but even here, the policy of the law yields to necessity, for the purposes of justice; and where it is essential to justice, that such evidence should be given, the general rule of policy gives way. Another instance of the same kind occurs, where the particular evidence would involve some disclosure prejudicial to the interests of the public, in which case, it becomes necessary to incur the less, in order to exclude a greater evil. In the present case, there is no conflict whatsoever, and the rule of exclusion is even inconsistent with the ordinary practice, in receiving evidence in a civil case, in proof of the very same fact. Suppose, that in the case already suggested, the party reflected on should proceed, as he may, at once, by a civil action and indictment. On the trial of the former, it would undoubtedly be competent to the defendant, under proper pleas, to give evidence of the truth of his statement, and to make use of such evidence, to shew that he acted *bond fide*; and, though he failed to prove the truth of the fact precisely as stated, he would be entitled to make use of all the facts proved, in order to establish the goodness of his motives. It is, therefore, inconsistent to exclude such evidence, when offered to prove precisely the same fact, where its decision is to determine the guilt or innocence of the party indicted. Could such a distinction be made, it should seem that the greater latitude ought rather to be allowed, where a party is to defend himself against a criminal charge, than where he has merely to repel a claim for damages. The inconsistency, then, stands simply thus:—that in a civil action, where the question turns upon actual motive, the real state of the facts is admissible, in order to ascertain that motive; whilst in a criminal proceeding, in respect of the same alleged libel, and when the same question depends on the same motive, the very same means of ascertainment are rejected. This is such a manifest incongruity, as to require strong support from some collateral reasons of policy; none such, however, exist, and the distinction is in reality an unwarrantable deduction from a principle, probably in itself defective, but which, were it ever so well founded, would not warrant the exclusion. The only ground of distinction is this, that in respect of the action for damages, the truth of the matter published is a good answer to the action, whilst, as concerns the criminal offence, the truth or falsity of the matter published, is immaterial. Now, assuming this to be a sound and beneficial distinction, and that the truth ought to be no bar to a criminal charge, it is no legal or reasonable consequence that the truth or falsity of the statement should be excluded as evidence to prove a fact, viz., the motive of the party, when it becomes material. The truth is used, not as a bar, but as evidence of a fact, which the law itself recognizes as material, and when the law makes criminality to depend on the actual motive of the party,

the exclusion of evidence, which would show that which in point of law it is essential to know, is in effect to hinder and frustrate the object of the law itself. It is to make the law declare, first, that the motive of the party, shall be deemed material, but at the same time to declare, that the best means for ascertaining the party's real motive, shall be excluded.

[To be continued.]

ON SPECIFIC DEVISES.

"Every devise of land is specific," said Lord Hardwicke in *Forrester v. Leigh*, 1 Amb. 171; 2 P. Wms. 664, assigning as a reason that "Land did not fluctuate, and no more passed by the will than the testator had at the time of making it." Subsequent Chancellors concurring in the reason, so upheld the principle that it became one of the clearest landmarks in property law, and received the sanction of Lord Eldon in *Hill v. Cock*, 1 Ves. & B. 175, where his lordship said "that every devise of land, though in terms residuary, was specific"—a different principle, however, prevailed with respect to personal estate, that being always fluctuating.

The ground of this distinction, however, lies deeper than any principle of equity, being embedded in the wisdom of the Common Law, and is enunciated by Lord Coke, and other text writers, formerly considered authorities, in such sentences as the following:—"The heir is to be helped if by any construction it may be."—"The heir is not to be disinherited but by express words or necessary implication."—"Heir trusts result on him."—"The heir is greatly favoured, both in law and in equity," and numerous others of similar import.

We are far from disputing the propriety of the maxim, "that every man has a right to do what he will with his own," and therefore do not question the rule which gives effect to the intention, whenever it could be clearly ascertained, and therefore would not have engrafted upon it the condition that such intention should be according to law. On the contrary, we would have harmonized both the law and the intention, by giving full effect to the latter when clearly expressed, but giving as full an effect to the former whenever it was clear, or even when a judicial doubt overhung the intention:—the new Statute of Wills, 1 Vict. c. 26, however, has rendered such views futile in practice, however seriously they may be entertained in theory.

We fancy there is an ancient maxim to be met with in the books to the effect, that "it is a perpetual law that no human law is perpetual;" the truth of this is verified by the sweeping change effected by this stat., the 24th sect. of which enacts, "That every will shall be construed with reference to the real estate and personal estate," comprised in it, to speak

and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention shall appear by the will," from which it is evident that the Common Law principle must be disregarded, and the same construction applied to both descriptions of property: the gravity and wisdom of the parliament, (to speak after the manner of the olden time,) having changed the law, though the reason against the change still forcibly exists. We must not, however, evince an ignorance of the omnipotence of parliament, and therefore protest against the supposition of our denying its power to act upon volition, to reconcile contradiction, and disregard principle if in the plenitude of its wisdom it should see fit.

It is impossible, nor is it desirable, constituted as society now is, that the principle of the greatest happiness of the greatest number, democratically considered, can be carried out, and the simplicity of the olden times has so far vanished, that the safety principles of the Common Law, in which we include that of primogeniture, have ceased to be popular; but whether this be owing to the negligence of some or the clamour of others,—whether it is become a vital principle with the reflecting portion of the community, or is merely an *ignis fatuus* of the masses who are flattered into the belief that they ought to control all government,—the columns of the *Legal Observer* is not the place to inquire. We simply therefore repeat our impression, that the law of primogeniture is not a favorite with many, because they are aware it offers no direct advantages to themselves, and are indifferent or insensible to its advantages upon society at large: of this we presume the acute legal reformer who framed this statute was aware, and therefore availing himself of the popular ignorance, he overturned much of what we still call the wisdom of ages, by a clause of four lines. Happily we are not precluded from expressing a doubt whether the certainty of the law which this 24th section has displaced, was not infinitely to be preferred to the glorious uncertainty it has introduced: for who, possessing less authoritative wisdom than a Chancellor or a Master of the Rolls, can safely determine whether a contrary intention does or does not appear by any will upon which the shadow of a doubt can arise?

True it is that the new statute must bring additional grist to the professional mill; but although the degrading principle of selfishness intercepts that of common honesty in some, the profession as a body has shewn itself superior to so vile a degradation, and therefore cannot be accused of sanctioning the principle of acting upon false pretences, which is alarmingly prevalent in the present day. Every lawyer knows that the principal operation of this section is to displace the presumption which formerly existed in favour of the heir, by turning it into a presumption against him,

* These words, "and personal estate," were quite unnecessary here—the law as to per-

sonality being previously as stated by this section.

leaving the difficulty of ascertaining the intention untouched; the possibility of the law being against the intention, was the ground upon which it proceeded. The new statute has therefore subverted a great principle, by setting up a class of possibilities against settled legal principles; whilst, as far as human judgment can decide, these possibilities against the heir may be as improbable and impossible as those which the wisdom of the law, disregarding consequences in particular cases, had set up in his favour. The alteration is purely arbitrary, and based upon no legal principle, unless the uncertainty of judicial conjecture is to be ranked as such.

We frankly confess that there are numerous admirers of this section, who contend with political asperity for the justness of its views, and that this and some other changes were imperiously called for by the exigency of the times and the altered state of society: in other words, that the aristocracy of money was encroaching upon that of rank, and (suicidally) siding the masses in demanding them: nor can it be denied that the Courts have latterly given legal principles the go-by when ranged in opposition to those which, in a certain sense, may be said to be popular; and no instances were more striking than those affecting the Common Law rights of the heir, which were apparently lost sight of in a pressing search after the intention, even in wills "confessedly obscure," where "opinions could not be confidently given," where "the Courts have felt bound to decide upon opinions most justified by the argument, though they had more or less fluctuated during the discussion." Decisions, heralded by such observations, no doubt aided the innovation effected by this statute, and encouraged its introduction.

The Common law is said to be nothing else but "a common custom of the realm;" or, according to Lord Coke, "a common opinion generally received;" and Finch calls it "a law used by prescription throughout the realm;"—all these definitions have the same meaning, and refer to the same thing as one of remarkable simplicity, well-known and generally understood, and upon no point was it more clear than upon the rights of the heir, which, in numerous instances throughout the length and breadth of the law, were cast upon him, and had the effect of so many proclamations of what the law really was, and ultimately raising a vehement presumption in his favour, that it was the intention of the testator that he should take all that the law gave him, and which the testator, having the power, had not otherwise disposed of. All this, however, is inverted by the new statute, and therefore instead of reading that "every devise of land is specific," it must be remembered that "no devise is so."

X. Y. Z.

CONSOLIDATION AND AMENDMENT OF THE LAW OF ATTORNEYS.

To the Editor of the Legal Observer.

THE proposed Attorney's Bill is an excellent measure, and ought to be made as complete as possible, and I shall be glad, along with others at whose wish I address you, to see attention drawn to the following suggestions:

That in lieu of the present cumbersome and inconvenient regulations on the admissions of attorneys and solicitors in the several Courts, there shall simply be one tribunal, as at present for examination, and another, as at present, for admission, as in the Courts of Queen's Bench and Chancery; and that all attorneys and solicitors admitted of either of these Courts shall be allowed to practise not only in them, but also in either of the other two Courts of Law and the Court of Bankruptcy, without further admission,—a list being forwarded from time to time by the Courts of Queen's Bench and Chancery to the other four Courts, of the attorneys and solicitors admitted therein.

That as all attorneys and solicitors at the commencement of their articles of clerkship, on their admissions, and subsequently, are subject to the same public burthens; as the Court of Queen's Bench possesses a stringent and summary control over the misconduct of attorneys; and as any attorney may be named a commissioner for the examination of witnesses, &c. in a suit in Chancery (an appointment not less important than that of being present on the execution of a deed of conveyance by a married woman), it shall be provided by the act that all attorneys and solicitors in practice may in common take the acknowledgments of married women under the Fines and Recoveries Act, in the same manner as the attorneys appointed by the Chief Justice of the Common Pleas.

That in lieu of the commissions granted to attorneys and solicitors to take affidavits in the Superior Courts of Law, and the Court of Chancery, it shall be provided that all attorneys and solicitors in practice shall have power to swear affidavits in these Courts without commissions, which seem to be only necessary and convenient as far as regards the fees and charges made upon them.

AN ATTORNEY.

AMONGST the various letters which have appeared in "The Legal Observer," on the bill brought in by Lord Langdale for amending and consolidating the laws relative to attorneys, no one has suggested any course for preventing any unqualified practitioners interfering with the business of the regularly admitted and certificated attorneys (except the difficult and expensive one of an application to the Court). The late case of *Willis*, with which the Law Society took so much trouble, and which appeared in your journal, shews how difficult it is to bring the case sufficiently within the statute; and that case, as well as many others,

shews that unqualified practitioners may carry on a very successful business with safety. The losses which the profession daily is subjected to by the reduction of the business and charges of the profession, seem to me to entitle the attorneys to call on the legislature to provide some remedy beyond the power of applying to the Court, in order that the attorneys may be protected.

The remedy I beg to suggest is, that no writ, either at Common Law or in Chancery, or fiat in Bankruptcy, shall be issued, or appearance entered, either at Common Law or in Chancery, until a retainer in writing shall be signed by the party to be charged and filed by the attorney employed to issue such writ or fiat, or enter such appearance with the proper officer of the Court, whose duty it may be to issue such writ or fiat, or enter such appearance. And that no recovery should be had in an action on an attorney or solicitor's bill, nor should the Master be allowed to tax any costs for the plaintiff or defendant in any action, or on any reference, beyond the costs out of pocket, until such retainer shall be produced by the proper officer of the Court.

The suggestion of requiring a retainer to be filed I need not tell you is not new, but it has been discontinued since the stamp duty on legal proceedings was repealed, though the Insolvent Court has always insisted on such an instrument being signed before any proceedings can be taken in that Court. I hope that the learned Lord who has brought in the bill, may deem these suggestions worthy of notice.

A MEMBER OF THE LAW SOCIETY.

I have been reading the bill for consolidating and amending the law of attorneys, as stated in the last number of the *Legal Observer*. I beg to call your attention to two points:—1st, clause 14 requires an affidavit by the clerk or his master that the clerk has actually and really served, &c. during the *whole time*, and in the manner required by the provisions of that act, without making any exception for the illness of the clerk, or his absence with leave to visit his friends; and in a very recent number I observed you said a month at this season was a reasonable absence; but if that time be taken, how can any one swear that he has *actually and really served during the whole time*?

The second point I beg to refer to is the *veraxa questio* of whether a person admitted an attorney, and not taking out a certificate for more than twelve months after such admission, can practise without being re-admitted. As many young men, after they are admitted, spend a year or two as clerk to an attorney, or have not the means of beginning business on their own account, it is very hard upon them to incur the expence of a certificate, and the heavy duty payable on it, or the still more harassing and expensive plan of a re-admission before they can practise.

AN OLD SUBSCRIBER.

[As to the 1st point, the bill contains precisely the same provision as will be found in

the existing statutes. The 2d objection is removed by the clause enabling a judge to make an order for the issuing of the annual certificates. The enactment declaring the admission void in case a certificate is not taken out for more than twelve months, is to be repealed. Ed.]

THE ANNUAL CERTIFICATE DUTY.

Sir,

BEING one of those who "strenuously urging the necessity of agitation for the purpose of obtaining the removal" of the certificate tax, are condemned rather unceremoniously by A. P., in a letter following mine upon this subject in your last Journal; permit me to defend my assumption of what I considered an indisputable grievance. I would observe, in passing, that your contented correspondent, whilst professing the highest notion of, and regard for "the dignity and welfare of the profession," and exhorting us who are not so "devoted to promote those measures which conduce to the dignity, &c.," aforesaid, to save him and "his brother solicitors" from blushing for our discontent,—he nevertheless, with singular inappropriateness rests his approbation of the impost, on a reason which in itself would form an objection with such as are truly penetrated by a just estimation of our order, inasmuch as it puts us on the same footing with "innkeepers, auctioneers, &c.," and I would add, pedlars and hawkers. And this brings me to his argument: first, it is not true that we urge our being "taxed by this duty in a manner in which no other calling participates." We assert only that no other *profession* is so taxed, and in so doing we take a fair and just objection, and claim, as members of a class, whose education and *necessary* style of living are more expensive than theirs, how respectable soever the individuals whose calling is a trade, that exemption which the other professions enjoy.

The licensing, &c., of innkeepers, and other tradesmen, therefore, is not only beside the question before us, but evidently an unfair argument in any shape, unless A. P. cannot only shew that the average gains of an attorney, (to say nothing of the maximum) are equal to anything approaching to the income of those engaged in trade, but also that these are charged without reference to their income in the many other shapes as we are. I need not say, the reverse is the fact. It seems that A. P. has forgotten in his very *fluttering* analogy, to take into account the premium (from one hundred to three hundred guineas,) paid upon our articles of clerkship, what might be called the *primer seisin* of our substance, (the first *seized*;) item, the 120*l.* tax or fine, as it were for *alienation*, and next the fine of 25*l.* for suing out our *livery* and fees, to about the same amount on taking upon us the honour of our legal *knighthood*, or in other phrase, upon admission:—To

say nothing of extra premiums, maintenance, &c.

Now, when these heavy disbursements in hard cash are considered, before a 3s. 4d. can be touched, nay, before we are allowed the privilege to purchase our 12l. or 8l. further licence (without which annually renewed we are not entitled to sue for a sixpence,) with the notorious fact that the profits arising from the practice of common law itself, (usually the principal part of the young practitioner's business for some few years,) generally are insufficient to support a "gentleman,"—I think we scarcely deserve the imputation of being either "avaricious" or "discontented," if, after a long and patient endurance of the evil, we loudly pray the abolition of this annual poll tax, or to keep up my former figure, this imposition *in capite*, especially in these stirring days so ripe in agitation and repeal.

I have thought it necessary merely to meet your correspondent on the single ground he took in opposition; on other points, I still assume our grievance to be indisputable, and the tax as unjust, invidious, and oppressive.

Wolverhampton.

ONE, &c.

SELECTIONS FROM CORRESPONDENCE.

SPOILED STAMPS.

The time allowed for an application for the allowance of spoiled stamps on deeds executed, is frequently rendered useless, being limited to six months. The time is inconveniently short, and I trust the Incorporated Law Society will take the trouble to memorialize the Commissioners of Stamps to get the time extended to twelve months.

I lately lost a considerable sum in stamps, having been for some months absent in the country, which prevented the application within the prescribed period.

CIVIS A.

LIEN ON JUDGMENTS AND DECREES.

With reference to the able article in the Legal Observer of the 21st August, "Attorneys' Lien on Judgments and Decrees," I beg to inquire whether the Court will regard the solicitor's lien, where there is a fund in Court, but a debt owing to the estate from the defendant of a greater amount than the costs? I will suppose the case of a defendant executor, (in a creditor's suit for the administration of the testator's estate) indebted to his testator's estate. I presume the Court would set-off his debt against his costs; in which case his solicitor would have no lien upon the fund in Court; but I cannot find any case in point.

J. P.

MOOT POINTS.

DOWER OF EQUITY OF REDEMPTION.

THE following remarks will, I think, "satisfactorily set at rest" the point mooted by A. M. C., *ante* p. 409. As J. C. was married since 1834, the case comes within the statute for the amendment of the law relating to dower. By sect. 4 of that act it is enacted "that no widow shall be entitled to dower out of any land which shall have been absolutely disposed of by her husband in his lifetime, or by his will." It would therefore appear that J. C. could, by an absolute disposition, bar the dower of his wife without her concurrence; and consequently, that it is not necessary to have the conveyance to the purchaser acknowledged.

The necessity for the acknowledgment of the mortgage to E. B. is very questionable. All partial estates and interests, and all charges created by any disposition of the husband, and all debts, incumbrances, contracts and engagements, are declared valid and effectual against the right of dower (s. 6). This section undoubtedly gives priority to any incumbrance created by the husband. It is, however, conceded, that it would not be expedient to rely on this provision in practice, inasmuch as a partial alienation does not absolutely bar dower, but only postpones it to the estate or interest created by such alienation. But it is submitted that a declaration by J. C. in the mortgage deed would have been effectual to exclude the right of his wife to dower, the husband being empowered to bar the dower of his wife, not only by declaration in the conveyance to him, but also by declaration in any deed executed by him (s. 6).

LECTOR.

In the case mentioned by A. M. C. p. 409, a husband mortgaged hereditaments, and the deed was acknowledged by the wife, for the purpose of barring her dower. The parties were "married since the passing of the late act relating to dower." Upon these facts two questions arise: first, did the wife's acknowledgment bar her right to dower out of the equity of redemption? and second, if it did not, is it necessary, in order to bar this right, that she should acknowledge the conveyance of the hereditaments?

First, it is submitted that her acknowledgment did not bar her right to dower out of the equity of redemption. By the 3 & 4 W. 4, c. 74, s. 77, a married woman has, by acknowledging a conveyance, the same power of conveying any estate, as if she were a *feme sole*. It is clear that the effect of her acknowledgment, as to the interest it passes, depends upon the nature of the deed that is acknowledged. If it be a conveyance in fee, then her acknowledgment of the deed will have the effect of passing her estate in fee; or if the conveyance be in tail, or for lives, or years, her acknowledgment will have the corresponding effect. In the present case the conveyance is a mortgage, and the wife's acknowledgment will

have simply the effect of mortgaging her right to dower. After the execution of the mortgage, an equitable estate remains in the husband, out of which, by 3 & 4 W. 4, c. 108, s. 2, the wife is dowerable. It might as well be maintained that, if she acknowledged a deed which conveyed fifty acres of land out of an estate containing one hundred acres, it would bar her dower in the remaining fifty acres, as to assert that in the present case her acknowledgment bars her dower in the equity of redemption.

Secondly, although it be not barred, yet her acknowledgment is not necessary to bar it. Sec. 2 of 3 & 4 W. 4, c. 105, gives the right of dower out of equitable estates; and by the 4th section the disposition of the husband alone is sufficient to bar the wife's right to dower. By this act the husband alone has the full power of charging, or absolutely defeating, the wife's right to dower.

J. B. A.

NEW BILLS IN PARLIAMENT.

BANKRUPTCY LAW.

This is a bill intitled "An Act for the amendment of the laws relating to Bankrupts, and for the better advancement of Justice in certain matters relating to Creditors and Debtors."

1. It recites 1 & 2 W. 4, c. 56; 5 & 6 W. 4, c. 29; 1 & 2 Vict. c. 110.

2. Rules for construction of this act.

3. Laws at variance with this act repealed.

4. Petitioning creditor's bond may be dispensed with.

5. Fines in bankruptcy to be transmitted direct to the Court authorized to act in the prosecution thereof.

6. Person against whom a fiat in bankruptcy has issued, on proof of probable cause for believing that he is about to quit England, or to remove or conceal his goods with intent to defraud creditors, may be attached.

7. No person liable to become bankrupt upon an act committed more than twelve months.

8. Act of bankruptcy concerted between bankrupt and creditor, &c. not to invalidate fiat.

9. Petitioning creditor's debt. 50*l*. one creditor; 75*l*. two creditors; 100*l*. three or more.

10. Stable keepers and other persons specially named liable to become bankrupts.

11. Creditor of trader making affidavit of his debt and of his having required payment, court may summon the trader.

12. Manner of proceeding on summons of trader by a creditor.

13. Trader not attending summons (having no lawful impediment), or upon appearance refusing to admit the demand, or to make deposition of belief of a good answer thereto, and not paying or compounding within a certain time to the satisfaction of the creditor, or giving bond, with two sufficient sureties as the Court shall appoint, to pay such sum as shall

be recovered, together with costs, an act of bankruptcy.

14. What to be deemed a refusal of admission of the debt.

15. Trader signing an admission of demand in form prescribed, and not paying, tendering, or compounding to the satisfaction of the creditor within a certain time, an act of bankruptcy.

16. Trader admitting part only of demand, and not making deposition of his belief of a good answer to the evidence, and not paying or tendering or compounding for sums admitted to the satisfaction of creditor, within a certain time, and, as to residue not paying or compounding to the satisfaction of creditor within a certain time, or entering into bond with two sufficient sureties as the Court shall approve, to pay such sum as shall be recovered together with costs, an act of bankruptcy.

17. Admission of debt signed elsewhere than in Court, if attested by attorney of the trader in the form required, may be filed, and have the same force as an admission signed by a trader on his appearance in court under the summons.

18. Trader summoned on affidavit of debt to have such costs as the court shall think fit.

19. Wherever a creditor (plaintiff) shall not recover the amount of the sum sworn to in his affidavit of debt filed against a trader under this act, if such affidavit be made for such amount without probable cause, the trader (defendant) shall be entitled to costs under a rule of Court.

20. Trader not paying, securing, or compounding for a judgment debt, upon which the plaintiff might sue but execution, within twenty-one days after notice requiring payment, an act of bankruptcy.

21. Trader disobeying order of any court of equity, or order in bankruptcy and lunacy, for payment of money, after service of order for payment on a peremptory day fixed, an act of bankruptcy.

22. Trader filing a declaration of insolvency in the Court of Bankruptcy, an act of bankruptcy.

23. Person adjudged bankrupt to have notice thereof before the adjudication be advertised, and to be allowed days to contest the same before the Court adjudicating; if petitioning creditor's debt, trading, or act of bankruptcy appear insufficient, adjudication then to be annulled, or otherwise the adjudication then to be advertised; with consent of bankrupt adjudication may be advertised sooner.

24. If the bankrupt shall not within a limited time proceed to dispute the fiat, and prosecute his proceeding with diligence and effect, the gazette to be evidence of the bankruptcy as against the bankrupt, and against persons whom the bankrupt might have sued had he not been adjudged bankrupt. Saving present rights for which any proceedings are pending.

25. Proviso for debtor to the bankrupt's estate paying the debt into Court, when sued by the assignees within the time for bankruptcy to dispute.

26. Audits and dividends to be had and made whenever the Court think fit after the time appointed for the bankrupt's last examination.

27. Court may order three months' wages or salary to clerks or servants.

28. Court may order two weeks wages to labourer or workman.

29. Distress not to be available for more than six months rent due, the landlord to prove for the residue.

30. Search warrants may be granted.

31. In cases of a member of a firm being bankrupt, Court may authorize actions or suits in name of assignee of bankrupt and remaining partner.

32. Bankrupt not surrendering, and submitting to be examined; or making discovery of his estate and effects; or not delivering up his estate, books, &c.; or removing, concealing, or embezzling, to the value of 10*l.*, guilty of felony, and liable to transportation or imprisonment, with or without hard labour.

33. Court may enlarge the time for the bankrupt surrendering himself.

34. A person adjudged bankrupt, after an act of bankruptcy, or in contemplation of bankruptcy, destroying or falsifying, &c., any of his books, &c., or making false entries in any book of account or other document, to be deemed guilty of a misdemeanor, and liable to imprisonment, with or without hard labour.

35. Bankrupt having obtained goods on credit under false pretence of dealing in the ordinary course of trade, or removing, concealing, &c., goods so obtained, guilty of a misdemeanor.

36. Bankrupt discharged by certificate of conformity. Discharge of bankrupt not to release or discharge a partner or person jointly bound.

37. Bankrupt not entitled to certificate, and certificate, if obtained, void, if he has lost by gaming 20*l.* in one day, or 200*l.* within twelve months, or 200*l.* by stock jobbing; or concealed or destroyed books, &c.; or made fraudulent entries; or concealed any part of his property, or permitted fictitious debts to be proved.

38. Mode of obtaining certificate of conformity. Court to appoint a public sitting for the allowance of the certificate. At such sitting any creditors may be heard against the allowance of the certificate. Court to judge of objections. No certificate to be a discharge, unless Court certify to Lord Chancellor bankrupt's conformity, &c., and bankrupt makes oath that certificate was obtained fairly. Certificate to be confirmed by Lord Chancellor. Creditors may be heard against confirmation.

39. Contracts and securities to induce creditors to forbear opposition, void.

40. Penalty for obtaining money, goods, chattels, or securities for money, as an inducement to forbear opposition, or consenting to allowance or confirmation of certificate.

41. Bankrupt having obtained his certificate free from arrest, and general plea for, in case of action against him, certificate to be evi-

dence of the bankruptcy and proceedings, and such bankrupt in execution may be ordered to be discharged.

42. Bankrupt not liable upon any promise to pay debt discharged by certificate, unless such promise be in writing.

43. Allowance to bankrupt: 5*re* per cent., and not exceeding 40*l.*, as soon as 10*s.* paid in the pound; seven and a half per cent., and not exceeding 500*l.*, if 12*s.* 6*d.*; ten per cent., and not exceeding 600*l.* if 15*s.* Allowance not payable till twelve months after date of the fiat, and then payable only if requisite amount of dividends paid to creditors who shall have proved. If at the expiration of twelve months, the dividends paid be under 10*l.*, bankrupt may be allowed not exceeding three per cent., and 300*l.*

44. One partner may receive allowance, though others not entitled.

45. Court of Bankruptcy and County Courts may be holden by any one or more of the Commissioners or Judges of such respective Courts, but power of punishing contempts only to be exercised by the Court when sitting in public, and then to be confined to contempts committed *in facie curiæ*, or, if committed out of Court, by contempts committed by the disobedience of some rule or order made by the Court when sitting in public.

46. Powers of Court of Bankruptcy and County Courts in all matters of bankruptcy under fiat. Exceptions.

47. Before whom affidavits are to be sworn.

48. Court may take evidence *voir dire* or upon affidavit.

49. Costs may be awarded by the Court of Bankruptcy and County Courts.

50. Rules to be made for regulating the forms of proceedings and practice to be observed in the Court of Bankruptcy.

51. Fiats in bankruptcy not directed to the Court of Bankruptcy to be directed to some one of the County Courts, to be prosecuted in such Court, and such Court to have the same power and jurisdiction in the prosecution thereof as Commissioners of Bankruptcy.

52. Fiats in bankruptcy in the country, and the proceedings thereon, to be transmitted to the Court of Bankruptcy, to be there filed and kept among the records of the said Court.

53. Appointment of official assignees. Their duty.

54. Proviso restricting the authority of official assignees.

55. For filling up vacancies in the number of official assignees.

56. Official assignee invested with the same powers, &c. as official assignees under former act.

57. Bankruptcies depending in the country to be removed into such of the County Courts as the Lord Chancellor may think fit.

58. Power to appoint official assignees to act with the existing assignees under such bankruptcies, and to whom the latter shall deliver over effects.

59. The fee of 20*l.* payable under fiats prosecuted in the Court of Bankruptcy abolished.

60. Sum to be paid on the granting of every fiat, and the application thereof.

61. Further sum to be paid on fiats prosecuted in the Court of Bankruptcy in lieu of other former fees.

62. Fees to be paid on sittings under fiats prosecuted in the County Courts to be carried to the Fee Fund of the Court.

63. Building for the transaction of business in bankruptcy vested in the Commissioners of the Court of Bankruptcy for the time being. 1 & 2 G. 4, c. 115.

64. Building to be called "The Court of Bankruptcy."

65. Salaries of the Commissioners of the Court of Bankruptcy.

66. Provision for filling up vacancies.

[The remainder of this bill will be given next week.]

SUPERIOR COURTS.

Rolls.

CONSTRUCTION OF WILL.—POWER OF APPOINTMENT.

A testator bequeathed a sum of stock to trustees, in trust to pay the interest and dividends to his daughter and her husband during their lives and the life of the survivor, and after their decease, then upon trust to transfer and pay over the stock unto their children, in such shares and proportions as the survivor should appoint by his or her last will: Held, that the power could only be exercised in favor of such of the children as should be living at the death of the survivor of the daughter and her husband.

Joseph Linton, the testator in this case, by his will, dated January 3d, 1814, gave and bequeathed a sum of 1700*l.* 3*½* per cent annuities, to the trustees named in his will, upon trust to pay the interest and dividends thereof to Joseph Christie and Sarah his wife (the testator's daughter) during their lives, and the life of the survivor, and after their decease, then upon trust to transfer and pay over the said stock unto their children, in such shares and proportions as the survivor of them should by his or her last will direct or appoint. Christie had five children by his wife, three of whom died young, another was married to the plaintiff, and died intestate in 1812, in the life-time of her father and mother and of the testator, and the other was married to the defendant Renneck. The testator died in 1817, and Mrs. Christie in 1820, leaving her husband her surviving, who by his will, dated in 1833, after reciting the power of appointment contained in the will of the testator Linton, directed and appointed the said stock to and in favor of his surviving daughter, the wife of the defendant Renneck. Joseph Christie died in February, 1839, and the bill was filed by the plaintiff as the personal representative of his wife, against the trustees of the testator Linton's will, the defendant Renneck and his wife, and the assign-

nees of Renneck, he having become bankrupt, claiming to be entitled in right of his wife, to a moiety of the stock in question, and all dividends which had accrued thereon since the death of Joseph Christie.

Pemberton and Roupell, for the plaintiff, contended, that according to the only proper construction which could be put upon the will, there was a direct gift to all the children of Joseph and Sarah Christie, and that, therefore, the plaintiff having married one of their daughters, was entitled as her personal representative, to an equal share of the stock bequeathed with the defendant Renneck, or those claiming under him. The power contained in the will of the testator Linton, conferred a personal duty, which became incapable of being executed by the events that occurred, and under any circumstances, Christie and his wife had not the power of excluding any of their children, but only of determining what share each child should take.

Kinderley and Dixon, for the defendant Renneck, and *Turner and Bush*, for his assignees, on the other hand, insisted that the power contained in the will of Linton was well executed by the appointment in the will of Joseph Christie; but even if it were not well executed, then there was an implied gift only to such one or more of the children of Christie and wife as should be living at the death of the survivor of them; and in either case, the plaintiff could have no claim.

Taylor, for the trustees.

The *Master of the Rolls*, after stating the facts of the case, and referring to the arguments urged in behalf of the respective parties, stated that the plaintiff's title depended altogether upon his showing that under the will of the testator Linton, there was a gift to all the children of Joseph Christie and Sarah his wife: for if that could not be made out, the exercise or non-exercise of the power by Joseph Christie, was to the plaintiff immaterial. It was insisted on the part of the defendants that as the power was only to be executed by the survivor of Mr. and Mrs. Christie, and the gift only appears by the power given to the trustees to transfer and pay to such child and children as the survivor of Christie and wife should appoint, the children could only take as joint-tenants, and if the power was not well executed, the stock would go to the survivor. His Lordship said, it was not possible to reconcile all the cases on the subject, but he thought that as this was not in express terms a gift to all the children, but to such of them as the survivor of Christie and wife should appoint, it must be construed to mean such children as should be living at the death of the surviving parent, and that the wife of the defendant Renneck, being both the object of the power and the object of the gift, was entitled. The plaintiff, therefore, having failed in establishing his claim, his bill must be dismissed with costs.

Woodcock v. Renneck and others, June 21st and 2nd, 1841.

Queen's Bench.

[Before the four Judges.]

DEPOSITION OF WITNESSES.—COMMISSIONERS' CERTIFICATE.

A person, to whom a commission to examine witnesses had been directed, wrote his certificate and reference on a piece of paper which was annexed to the depositions. Before the trial this paper was disannexed, for the purpose of copying the depositions: Held, that they were not admissible in evidence, and that affidavits to explain the circumstance could not be received to make them admissible.

Mr. Plutt shewed cause against a rule for setting aside a nonsuit, which had been entered under the following circumstances. The case on the part of the plaintiff was intended to be supported by depositions, taken under a commission sent to Ireland, under the authority of the 1 W. 4, c. 22;^a but when the deposition was produced, it was objected that it was not admissible in evidence, not having been properly certified by the commissioners. The deposition was in existence, and accompanying it from Ireland had come a paper signed by the commissioners, in these words—"The execution of this commission appears by this return, and the depositions hereunto annexed." But this paper was not annexed to the deposition. On the objection being taken that the deposition not being itself certified under the hand of the commissioner, nor having his certificate actually annexed to it, could not be received in evidence, the learned Judge at the trial rejected it, and the plaintiff was nonsuited. That nonsuit was right. The deposition produced was not annexed and identified by the certificate of the commissioner, as required by the statute, and therefore was not admissible in evidence. It might, perhaps, be contended that the deposition itself ought to be certified by the commissioner, but admitting that his certificate might be upon another piece of paper, it was clear that that paper should be so annexed to the deposition as to form but one document, and not to leave it doubtful to what paper it applied. Here the certificate was a separate piece of paper, which could just as easily have been produced with any other document as with the deposition which was tendered in evidence.

Mr. Hayward, in support of the rule.—The two papers had been joined together when they arrived from Ireland, but they had been

disjoined for the purpose of making copies of the depositions. The persons who had thus disjoined them, were ready to make oath as to the fact, and thus to remove any doubt as to the identity of the documents.

Lord Denman, C. J.—But the Court can only know what is "hereunto annexed," by seeing it annexed. Parol evidence of the fact cannot be received. The commissioner should have certified that "this paper, and all those marked by me with my name, or my initials," constituted the return to the commission.

Rule discharged.—*Ade v. Tommy*, T. T. 1841. Q. B. F. J.

Queen's Bench Practice Court.**ARBITRATION.—FINALITY OF AWARD.—****EXCESS OF POWER.**

In a reference of disputes with respect to the right to certain premises, the arbitrator awarded that certain conveyances should be executed on a day named, and that in case of a disagreement as to the terms of those conveyances, it should be settled by such solicitor or counsel as he should appoint: Held, that the award was not final; that the arbitrator had exceeded his authority, and that the objection was fatal to the whole award.

This was a motion to set aside an award made under a submission to arbitration, which had been made a rule of Court. The submission was dated 22d August, 1840, and recited that John Tandy the younger, claimed to be heir-at-law to his late brother William, and as such heir to be entitled to the possession, or to receive the rents and profits of certain premises in the county of Worcester; and that John Tandy the elder, as mortgagee of the premises, claimed title thereunto in respect of a sum of 100*l.* and interest, originally charged on them by one J. A., and which John Tandy, the elder, had paid off, and that Chas. Tandy as administrator of Wm. Tandy, alleged that should it be found that John Tandy the younger, as such heir-at-law as aforesaid was legally entitled to the possession of the premises, he would be deemed in equity either as trustee for or on behalf of the creditors and the persons entitled to the assets of the deceased under the statute for the distribution of intestate's effects. The issuing out of a writ from the Court of Exchequer in an action between John Tandy the younger, and John Tandy the elder, in which action the latter obtained judgment as in case of a nonsuit, was then verified; and it was also stated that divers other claims and differences having arisen between the parties, it was agreed to refer all matters in dispute to arbitration, the parties agreeing to execute all such conveyances, releases, and assurances, as the arbitrator should direct, the costs of the reference to be in the discretion of the arbitrator. On the 9th Nov., 1840, the arbitrator made his award, confirming the claim of John Tandy the younger, to be heir-at-law to his brother, and also confirming the claim of John Tandy the elder, to the sum of 100*l.*, and 46*l.* 5*s.* interest thereon; but finding that John Tandy the

^a 1 W. 4, c. 22, s. 10, by which it is enacted that no examination or deposition to be taken by virtue of this act, shall be read in evidence at any trial, without the consent of the party against whom it shall be offered, unless it shall appear to the satisfaction of the judge that the examinator or deponent is beyond the jurisdiction, &c., &c., in all or any of which cases the examination and depositions certified under the hand of the commissioners, &c., or other person taking the same, shall and may, without proof of the signature to such certificate, be received and read in evidence.

elder, and Chas. Tandy, were indebted to John Tandy the younger, in the sum of 1841. 15s. 7d. Having, then, directed the settlement of these accounts, it proceeded to order, that John Tandy the elder, and Chas. Tandy should deliver to John Tandy the younger, an abstract of all deeds in their possession relating to the premises in question, and s'ould, on the 23d December then next, execute all such conveyances, &c., as might be necessary, &c., unto the said John Tandy the younger, &c., all the estate, right, and interest of them the said John Tandy the elder, and Chas. Tandy, freed and discharged from the said mortgage debt of 100*l*. and interest, &c.; and in case of any disputes as to what conveyances, &c., should be necessary for that purpose, or as to any of the claims, covenants, or provisions to be contained therein should arise, the same should be settled and approved between the said parties by such counsel or solicitor as he (the arbitrator) should appoint: it then proceeded to award as to the costs. The present rule had been subsequently moved for, on the grounds that the arbitrator had exceeded his authority, and that the award was not final.

It was now urged, in support of the award, first, that the reservation of power by the arbitrator to appoint a person to settle any dispute which might arise as to the conveyances to be executed, did not vitiate the award; and, secondly, that, at all events, the objection could only be sustained so far as the particular clause of the award went, and that that might be rejected, and the remainder of the award might be considered to be good. *Addison v. Gray*, 2 Wils. 293; *Winter v. Lethbridge*, M. Cl. 253; 13 Price. 593; *Doe, d. Williams v. Richardson*, 8 Taunt. 697; *Aitchison v. Cursey*, 2 Bing. 199.

In support of the rule it was contended that the award was bad for want of finality, because the arbitrator had omitted to determine completely what should be done by the parties, and that the arbitrator had exceeded his power in reserving a future authority to himself. *Manser v. Heaver*, 3 B. and Ad. 925; *Thinne v. Rigby*, Cro. Jac. 314; *Ross v. Clifton*, 9 D. P. C. 355.

Cokeridge, J.—I think that the objection made to this award on the ground that the arbitrator has exceeded his authority, is fatal. If that excess of authority could be separated from the general effect of the award, so as to leave it untouched by putting it out of our consideration, it might not vitiate the whole award; but I think that it affects the very substance of the award, and it cannot be said that the arbitrator has properly decided the matters referred to him. The arbitrator here has reserved a contingent power to himself; but it is settled, that if an arbitrator does not decide the matter referred to him at the time of his making his award, but reserves to himself a future power to act, when his power is gone, it is an excess of authority. I think, therefore, that this is a fatal objection, and I am of opinion also, that the arbitrator could not delegate his authority, as he attempts to do. It is to be observed, that the question

left undecided, is the very question which forms the subject of the dispute.

Rule absolute.

Alexander and White, in support of the rule: *R. V. Lee, contra*.

Re Tandy and Tandy, T. T. 1841. Q. B. P. C.

SERVICE IN EJECTMENT.

Service in ejectment on the acting partner of a firm in possession of the premises sought to be recovered, is sufficient for judgment against the casual ejector.

Charles Clark moved for leave to sign judgment against the casual ejector. Service had been effected on "the acting town partner" of the firm, in possession of the premises sought to be recovered.

Wightman, J.—I think that is a sufficient service as to all the tenants.

Rule absolute.—*Doe, d. Overton v. Roe*, T. T. 1841. Q. B. P. C.

CHANCERY SITTINGS.

In and after Michaelmas Term, 1841.

Before the Master of the Rolls.

AT WESTMINSTER.

Tuesday .. Nov. 2	Motions.
Wednesday 3	Petitions in Gen ^l Paper.
Thursday 4	
Friday 5	
Saturday 6	Pleas, Demurrers, Causes,
Monday 8	Further Directions, and
Tuesday 9	Exceptions.
Wednesday 10	
Thursday 11	Motions.
Friday 12	
Saturday 13	Pleas, Demurrers, Causes,
Monday 15	Further Directions, and
Tuesday 16	Exceptions.
Wednesday 17	
Thursday 18	Motions.
Friday 19	
Saturday 20	Pleas, Demurrers, Causes,
Monday 22	Further Directions, and
Tuesday 23	Exceptions.
Wednesday 24	Petitions in Gen. Paper.
Thursday 25	Motions.

AT THE ROLLS.

Friday 26	Short Causes, after swearing in the Solicitors.
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Short Causes, Consent Causes, and Consent Petitions, every Tuesday, at the Sitting of the Court.

THE EDITOR'S LETTER BOX.

The communications of "A Country Articled Clerk," W. M., Q. Q., J. J. W., and others are printed, but are unavoidably deferred.

The alterations in the County Courts Bill since the last session shall be stated in an early Number. It does not appear that any further progress will be attempted in this measure till after Christmas.

Several Numbers of this work having been reprinted, imperfect sets may now be completed.

The Legal Observer.

SATURDAY, OCTOBER 9, 1841.

— “ Quod magis ad nos
Pertinet, et nescire malum est, agitamus.

HORAT.

ON THE SEPARATE ESTATE OF A MARRIED WOMAN.

A MARRIED WOMAN, so far as her separate estate is concerned, is considered in equity as a *feme sole*, and she may sell or charge her interest therein, in the same manner as any other owner of property can. But it was at one time thought that where the instrument under which she claimed her separate estate prescribed a particular mode of parting with her interest during her coverture, that she must adopt such particular mode, and that any other mode of disposing of it would be inoperative.^a But this view is now considered incorrect. The separate property of a married woman being a creature of equity, it follows that if she has a power to deal with it, she has the other powers incident to property in general; and inasmuch as her creditors have not the means at law of compelling payment of those debts, a court of equity takes upon itself to give effect to them, not as personal liabilities, but by laying hold of the separate property as the only means by which they can be satisfied.^b It is now therefore clearly settled that the general engagements of a married woman are enforced by a court of equity against her separate estate, not as executions of a power of appointment, but on the principle that to whatever extent she has by the terms of the settlement the power of dealing with her separate property, she has also the other power incident to property in general, viz., the power of contracting debts, to be paid out of it;^c and any security given by her will charge her^d separate property, although no reference be made to it. She can

therefore give a promissory note, which will be satisfied out of her separate estate.^e The holder of her promissory note has her contract, which equity considers her capable of entering into; and it would be a very strong proposition to say when she has, by an instrument under her hand acknowledged her debt, and promised to pay it, she is not to be considered as creating an obligation which binds her.^f

In a very recent case, a married woman having a separate estate, executed the following document: “I do hereby accept Moses Owens as my tenant of the public-house, situated at the east side of Sea Brow, with the privilege of letting it, and to return to the said Moses Owen, the sum of 210*l.*, which he paid for licence, fixtures, and appurtenants, as per inventory, provided he leaves the said house within a given notice.” This document alone, said *Cottenham*, C.,^g within the authority of cases which have been decided, would have been operative upon her separate estate, but not by way of the execution of a power, although that has been an expression sometimes used in cases where the Court has enforced the contracts of married women against their separate estate. It cannot be an execution of the power, because it neither refers to the power, nor to the subject-matter of the power; nor indeed, in many of the cases, has there been any power existing at all. It is quite clear, therefore, that there is nothing in such a transaction which has any resemblance to the execution of a power. What it is, it is not easy to define. It has sometimes been treated as a disposing of the particular estate, but the contract is silent as to the separate estate, for a promissory note is merely a contract to pay; not saying out of what it is to be paid, or by what means it is to be paid;

^a See *Bullpin v. Clark*, 17 Ves. 365.

^f Per Lord *Cottenham*, C., 1 C. & Ph. 54.

^g 1 C. & Ph. 53.

^a *Francis v. Wiggzell*, 1 Madd. 261.
^b *Hulme v. Tenant*, 1 Bro. C. C. 21; per Lord *Cottenham*, C.; *Owens v. Dickinson*, 1 Craig. & Phill. 54.

^c *Owens v. Dickinson*, 1 Craig. & Ph. 40.
^d *Murray v. Barlee*, 4 Sim. 91; 2 M. & K. 209.

and it is not correct, according to legal principles, to say that a contract to pay, is to be construed into a contract to pay out of a particular property, so as to constitute a lien on that property.

It is quite clear then, that if any written security be given by a married woman, or any contract in writing be entered into by her, her separate estate will be bound; and it seems open to doubt, whether a verbal promise to pay, if clearly proved, would not be sufficient. In *Clinton v. Willes*,^b Sir Thomas Plumer suggested a doubt whether it was necessary there should be a contract in writing; and Lord Cottenham says,^c "It certainly seems strange that there should be any difference between a contract in writing, when no statute requires it to be in writing. It is an artificial distinction, not recognised in any other case. On that point, however, I give no opinion at present."

Thus stands the law as to a woman's separate estate. "A Court of Equity, by securing to a married woman property that is settled to her separate use, gives her benefits by subjecting it to her general disposition, and by freeing it from her husband's controul; but at the same time it does not place her in a worse situation in any respect than she would be otherwise in at law. It leaves her unaffected by any contract and liability, except when she does any act affecting her separate property, in which case the Courts hold her property to be bound, but leaves her person free."

HORSEMANSHIP OF LAWYERS.

NOTHING pleases us so much as to see our legal friends on horseback. We are quite sure that all lawyers are improved by a little riding; it calls into play a whole set of muscles, which, otherwise, the lawyer does not exercise at all. It shakes down his bile. A ride before breakfast greatly assists the correct digestion of the day's business; and if this is not convenient, a gentle trot round the Regent's Park before dinner, with an occasional penetration a few miles down the Edgware Road, or a canter up Hampstead Hill, will be found nearly as beneficial. We are always glad, therefore, to see our friends nicely mounted, not only on their account, but because we know it is really for the good of

the public, and that legal business is in fact much better attended to in consequence. Besides, it is a sign that a man is pretty well to do, and is rather a rising man, if he takes to a horse. We warn our young friends, however, of riding in Hyde Park. We have no great opinion of a man's legal knowledge who rides in Hyde Park. Perhaps he may, very early in the morning, take a gallop down Rotten Row; but we have grave doubts as to this. The only thing which justifies it is, that at that time, wet or dry, one is sure of meeting a common law judge, no mean proficient in horsemanship; and in all probability an equity judge—a somewhat hard rider. But whatever doubt there may be as to this, beyond the hour of nine let no young lawyer be seen in Hyde Park. We despair of him altogether, if we find him riding there at six or seven o'clock in the afternoon. He will never rise. He may be a very nice young man, but let him mark our words, he will never sit on the bench, or be in any thing like good business. All this by way of friendly caution.

These remarks have been suggested to us by a very late case, which forces us to give another warning. We advise all lawyers to job. They may think they know something about horses. They know nothing. If they are not lawyers they may know a good deal, but a knowledge of law and horses does not go together. They may rely on this, they will be cheated; they will be run away with, or come down when they least expect it. We recommend them, therefore, to job. It seems a little dearer, but they will find it much cheaper in the end. We could shew this in figures in two lines, but we have already said much more than we had intended. We have now only to call their attention to the following case. We have not the honour of knowing the plaintiff, and the law list in his case would be no assistance to us, but we shrewdly suspect he was a lawyer.

WARRANTY OF A HORSE.

Assumpsit on the warranty of a horse. Pleas, first, non-assumpsit; secondly, a denial of the unsoundness, on which issues were joined. At the trial before Lord Abinger, C. B., at the last Warwick Assizes, it appeared that at the time of the sale of the horse to the plaintiff, he remarked that the horse had "curby hocks," and objected to him on that ground. The defendant, however, gave a general warranty of soundness, and the plaintiff bought the horse for 60*l*. He was ridden hunting

^b 1 Sng. Pow. 208 n.

^c 1 Cr. & Ph. 55.

^d Per Sir L. Shudicell, V. C., in *Murray v. Burloc*, 4 Sim. 91.

by the plaintiff, and on the third day's hunting, about a fortnight after the sale, he sprung a curb. Veterinary surgeons were called on the part of the plaintiff, who stated that the term "curby hocks" indicated a peculiar form of hock, which was considered as rendering the horse more liable to throw out a curb, but did not of itself occasion lameness; and that the horse in question had curby hocks at the time of the sale. The Lord Chief Baron, in summing up, told the jury that a defect in the form of the hock, which had not occasioned lameness at the time of the sale, although it might render the animal more liable to become lame at some future time, was no breach of the warranty. A verdict having been found for the defendant,

Balguy now moved for a new trial.

Alderson, B.—*Dickenson v. Follett*, 1 M. & Rob. 299, is expressly in point for the defendant; and the law, as laid down by me on that occasion, has not been questioned in any subsequent case.

Lord Abinger, C. B., and Rolfe, B., concurred. Rule refused.—*Brown v. Elkington*, 8 Mee. & Wels. 132.

NEW BILLS IN PARLIAMENT.

BANKRUPTCY LAW.

[Concluded from p. 462.]

67. Power to Lord Chancellor to order retiring annuity to Commissioners of Court of Bankruptcy, and their successors.

68. Office of one of the registrars of the Court of Bankruptcy abolished, but the person holding the office to receive his present salary for life, unless he shall hold any public office of equal or greater annual value, in which case such salary not to be paid; or if of less value, then salary to be reduced so as in the whole not to exceed the amount of present salary.

69. Chief registrar to enter in books an abstract of all proceedings filed in the Court, in a form to be sanctioned by the Commissioners of the Court of Bankruptcy, and approved by the Lord Chancellor, with an alphabetical index.

70. Offices of clerk of enrolment to Court of Bankruptcy and of registrar of meetings abolished, and duties to be performed by chief registrar.

71. Salaries of registrars and deputy registrars increased. See 5 & 6 W. 4, c. 29, s. 21.

72. Provision for filling up vacancies, and for performance of duties.

73. Provision for certain expences, and salary of accountant, and appointment of such additional clerks to accountant, as Lord Chancellor may think fit.

74. Compensation to such existing com-

missioners in the country as the lords of the treasury deem entitled thereto.

75. Remedies for judgment creditors. Court empowered to examine judgment debtor, for the discovery of his property, to enable judgment creditor to avail himself of his execution.

76. Judgment debtor summoned to have such expences as the Court thinks fit.

77. Where judgment debtor possessed of property which cannot be taken in execution, or charged, judgment creditor may apply to the Court in which the judgment is entered up, to compel such debtor to assign sufficient to satisfy the judgment, or to discover other sufficient property available in execution, or chargeable.

78. Protection to creditors against frauds. Penalty for obtaining goods under false pretences.

79. Penalty on debtors absconding.

80. For preventing fraudulent grants by debtors, with intent to defraud any creditor.

81. *County Courts*.—Power to judge of a county court above miles from London to issue warrant to arrest a debtor in certain cases, such debtor being within the limits of the jurisdiction of the Court, and to detain him in custody for a limited time, or until an order obtained to hold him to bail, when the custody to be transferred to the sheriff or officer holding a *capias* issued thereon. 1 & 2 Vict. c. 110, s. 3.

82. Court of bankruptcy and county courts authorized to act in the execution of this act in matters of *cessio bonorum*, voluntary or compulsory, subject to appeal.

83. Proceedings in matters of *cessio bonorum* in the county courts, to be transmitted to the Court of Bankruptcy, to be there filed and kept among the records of the said Court.

84. *Voluntary cession*.—Insolvent debtor, with the concurrence of one or more creditors, may petition to be dealt with under the provisions of this act; a schedule of debts, &c. due by or to the debtor, and of his property, and probable value thereof, &c., to be annexed to the petition.

85. Requisite amount of concurring creditor's debt.

86. Court to appoint sittings, and to give notice in the London Gazette.

87. Official assignees to act with the assignees to be chosen by the creditors of the estate and effects of adjudicated debtors.

88. Proviso restricting the authority of official assignees.

89. Powers of the Court upon adjudication, and proceedings thereupon.

90. In case concurring, or petitioning creditor's debt be insufficient to support adjudication, Court may substitute another.

91. *Compulsory cession*.—Creditor making affidavit of his debt, and of his having delivered an account in writing, with notice requiring immediate payment, Court may summon the debtor.

92. Manner of proceeding on summons of the debtor.

93. Debtor not attending summons (having

no lawful impediment), or, upon appearance, refusing to admit the demand, or to make deposition of belief of a good answer thereto, and not paying or compounding within a certain time to the satisfaction of the creditor, or giving bond, with two sufficient sureties, as the Court shall approve, to pay such sum as shall be recovered, together with costs, such debtor liable to be dealt with under the provisions of the act.

94. What to be deemed a refusal of admission of the debt.

95. Debtor signing an admission of the demand in form prescribed, and not paying or tendering or compounding for the debt, to the satisfaction of the creditor, within a certain time, such debtor liable to be dealt with under the provisions of this act.

96. Debtor admitting part only of demand, and not making deposition of belief of a good answer to the residue, and not paying or tendering or compounding for sum admitted, to the satisfaction of the creditor, within a certain time, and as to the residue, not paying or compounding, to the satisfaction of the creditor, within a certain time, or entering into bond, with two sufficient sureties, as the Court shall approve, to pay such sum as shall be recovered, together with costs, such debtor liable to be dealt with under the provisions of this act.

97. Admission of debt signed elsewhere than in Court, if attested by attorney of the debtor in the form required, may be filed, and have the same force and effect as an admission signed by the debtor on the appearance in Court under the summons.

98. Debtor summoned on affidavit of debt to have such costs as the Court think fit.

99. Wherever a creditor (plaintiff) shall not recover the amount of the sum sworn to in his affidavit of debt filed against a debtor under this act, if such affidavit be made for such amount without probable cause, the debtor (defendant) shall be entitled to costs under a rule of Court.

100. Mode of obtaining an adjudication by the Court that debtor shall be dealt with under the provisions of this act, for dividing his property amongst his creditors.

101. Court fees payable in matters of *cessio bonorum* in Court of Bankruptcy and County Courts.

102. Effect of adjudication, and proceedings thereupon.

103. Adjudication subject to be reversed within a certain time.

104. After adjudication, the debtor to deliver in a schedule of debts, property, &c.

105. Clauses applicable to debtors, adjudicated on their own or on a creditor's return. No fiat to issue against any adjudicated debtor on a petitioning creditor's debt due before such adjudication.

106. Production of London Gazette containing advertisement of adjudication, to be conclusive evidence as against the debtor, and all persons whom he might sue, that the debtor was liable to be dealt with under this act.

107. Search warrants may be granted.

108. In case of adjudicated debtor being a member of a firm.

109. Joint and separate estates of adjudicated debtors to be administered as in bankruptcy.

110. Court may order three months wages to clerks or servants.

111. Court may order two weeks wages to labourer or workman.

112. Direction in Court as to the disposal of property in certain cases. Property may be mortgaged, if more beneficial.

113. Assignees' power not to extend to the income of a benefice or curacy. Sequestration of profit of benefice may be obtained.

114. Assignees power not to extend to the pay or pension of naval, military, or civil officers.

115. Goods in possession of adjudicated debtor, whereof he was reputed owner, to be deemed his property. No assignment of vessels under 3 & 4 W. 4, c. 55, to be affected.

116. Distress not to be available for more than six months rent.

117. Voluntary preference fraudulent and void, as against assignees.

118. Provisions of 3 G. 4, c. 39, extended to assignees of insolvents.

119. Warrant of attorney and *cognovit actionem* not to be acted upon against goods of insolvent, after filing of petition.

120. What shall be paid for insertion of advertisements.

121. Proceedings not liable to stamp duty, nor sales to auction duty.

122. Persons wilfully omitting any thing in the schedule or balance-sheet guilty of a misdemeanor, and liable to three years' imprisonment.

123. Penalty on petitioner fraudulently removing property.

124. Penalty for making false accounts or statements.

125. Debtor falsifying or mutilating books, &c., to be liable to imprisonment.

126. Indictment for offences.

127. Court may order prosecutor's expenses to be paid.

128. Doing away with arrest on final process, except in certain cases.

129. A judge of the Superior Court or of a County Court, may order a judgment debtor to be taken in execution, in certain cases.

130. Judge may discharge the prisoner or not. Order of Judge, may be appealed from. Party taken in execution, may apply for his discharge.

131. Judgment creditors within the meaning of 1 & 2 Vict. c. 110, s. 18, to be deemed judgment creditors, within the meaning of this act.

132. Provisions of this act relating to process in execution, applicable to the Courts and judges at Westminster, to be applicable to the Courts of Lancaster and Durham, and to all inferior Courts.

133. Power to judge of a county court, above miles from London, to issue warrant to arrest judgment debtors, in certain cases;

such judgment debtors being within the limits of the jurisdiction of the Court, and to detain him in custody for a limited time, or until judgment debt satisfied, or an order obtained to take and charge him in execution, when the custody to be transferred to the sheriff or officer holding a writ of *capias ad satisfaciendum* issued thereon.

134. Prisoners in custody on judgment, who have not filed petitions under Insolvent Debtor's act, entitled to their discharge.

135. Judgment creditor at whose suit a debtor shall stand charged in execution, may notwithstanding, sue forth and have remedy and execution against the property of the judgment debtor.

136. Judgment creditor, having under 1 & 2 Vict. c. 110, obtained a charge on securities, being entitled to a security, not to be deemed to have relinquished such charge or security, though the person be taken in execution, before the property charged or secured is realized. See 1 & 2 Vict. c. 110, s. 16.

137. Warrants to be under hand and seal, and every summons to be in writing, under the hand of a commissioner or judge of the Court.

138. How summons may be served, where the party is keeping out of the way.

139. Punishment of persons giving false evidence, or swearing or affirming any thing which shall be false.

140. Application of forfeitures.

141. Lord Chancellor empowered to appoint a taxing officer, and all bills of solicitors and attorneys in matters of bankruptcy and of *cessio bonorum* to be taxed by such officer, subject to review by the Court of Bankruptcy.

142. Bills of auctioneers, appraisers, brokers, valuers, and accountants to be settled by taxing officer, subject to review, in the same manner as bills of solicitors and attorneys so settled.

143. Jurisdiction of Insolvent Debtors' Court to cause matters therein to be transferred.

144. Matters depending in Insolvent Debtors' Court, and which would have been heard by the commissioners of such Court on circuit, to be heard by the County Courts. 1 & 2 Vict. c. 10.

145. Appeal under this act.

146. Records of Court for relief of Insolvent Debtors, to be kept as heretofore, until otherwise directed by the Lord Chancellor.

147. Compensation to commissioners of Insolvent Debtors' Court, on abolition of their offices. If appointed to any other office of greater value than the annuity, annuity to cease, or if of less value, annuity to be reduced, so that whole sum received should not exceed the amount of the compensation.

148. Power to the treasury to award compensation. If officer be placed in any other public office, annuity to cease or be reduced, so that the claimant should not receive in the whole more than the amount of the compensation.

AMENDMENT OF THE LAW OF ATTORNEYS.

Sir,

As the law of attorneys is now about to undergo an alteration, I beg to call the attention of country practitioners to a grievance affecting them, and which, if practicable, should be altered by the new act. Country attorneys take affidavits by virtue of commissions issuing from the different Courts, which costs them about 2*l.* each. These commissions limit the places in which the commissioner is empowered to take affidavits to five counties, and two cities and two towns, being also counties. The commissioner has no power to take an affidavit in any county not named in the commission.

If the attorney should alter his place of residence, and go to reside in a county not named in his commission, (which is the case with myself) he is compelled to incur the expense of other commissions to include such county, before he can swear affidavits therein; and this expense he is obliged to incur, as an accommodation to his neighbours, it being the invariable practice of the country attorneys to swear affidavits for each other without fee. The alteration I suggest is as follows: That every practising attorney be empowered to take affidavits in the Court of which he is admitted, and his authority to cease on his neglecting to take out his annual certificate.

AN OLD SUBSCRIBER.

The commission for swearing affidavits in Chancery, or what is generally termed "the appointment of a Master Extraordinary in Chancery," has no limit.

Sir,

It appears to me that the second section of Lord Langdale's bill relating to attorneys, will, if it becomes a law in its present state, have the effect of compelling attorneys who have been once admitted and enrolled, but who have not yet taken out their certificate, to be again admitted under the provisions of the act.

That sections says that no person shall act as attorney or solicitor &c., "unless such person shall have been *previously to the passing of this act* admitted and enrolled and otherwise *duly qualified to act* as an attorney or solicitor under or by virtue of the laws now in force, or unless such person shall *after the passing of this act* be admitted and enrolled and otherwise duly qualified to act as an attorney or solicitor pursuant to the directions and regulations of this act, &c."

Now, as an attorney is not "duly qualified" until he has taken out his certificate, it would seem that if he have not obtained such certificate before the passing of the act, that re-admission, or perhaps a fresh admission *under the act* would be necessary.

This, I submit, is unfair towards those persons who have been once examined and ad-

mitted, but who by reason of their not immediately commencing business on their own account, have not as yet obtained their certificate.

ONE, &c.

[The power given to the judges, where there has been an admission but a certificate has not been taken out for more than a year, affords a remedy for this supposed difficulty, at the expense of 2s. or thereabouts. If the party has served his clerkship and been examined, his case would come under the exceptions provided by the act.—ED.]

FORENSIC MEDICINE.—CORONERS.

WE have been favoured with a copy of Dr. Chowne's oration, delivered to the Medical Society of London, at their sixty-eighth anniversary, from which we gladly extract some passages relating to Forensic Medicine. The learned lecturer truly says,

"So intimate is the connexion of medical science with the administration of the laws, that courts of justice become objects of deep interest to the medical profession, as that profession is one of deep interest in the execution of legal proceedings.

"The coroner's inquest, having for one of its objects inquiry into the circumstances connected with every case of sudden or suspicious death, stands, however, in more obvious, though not in more absolute connexion with the medical profession.

"Such are the intrinsic merits comprised in that ancient institution, such the importance of the ends to be attained, that the very perfection of its theory tends to render at once more conspicuous and more lamentable, those practical errors by which it is frequently disfigured, and its objects are often frustrated. A tribunal exercising such important functions requires to have its importance sustained, by calling to the exercise of its responsible duties, men of station corresponding with the powers delegated to them; and their investigation should follow out to its furthest limit, every train of inquiry calculated to elucidate the subject under inquiry, in order that its decisions may finally have, so far as science and philosophy can supply, the character of infallibility. Amongst the unfortunate examples of defect are those in which medical testimony is not so followed out.

"It should not be overlooked, that in all inquiries taken on bodies, the object is to ascertain the true cause of death, and the circumstances under which that cause has been brought into operation; whether an injury to the deceased, to his family, and to society, has been occasioned either through negligence or through guilt? Hence, the investigation is generally, if not always one of responsibility and difficulty; the difficulty

moreover increases with the improvements of science, and as evil purposes become supplied with resources more subtle, and with means of concealment more secret. Neither is crime confined to the illiterate, but is perpetrated by those who have access to sources of knowledge which admit of criminal misapplication, and in whom are combined the talent and the wicked propensity to apply them to guilty ends; yet in cases of loss of life, apart from obvious causes, where under the outward appearance of natural death, the *subtle* and *too successful* agencies of crime may lie concealed, we have the anomaly of inquests and verdicts in the utter absence of medical evidence; of inferences founded on mere superficial probabilities, and of questions relating to matters of fact, solved, or rather taken to be solved, upon vague speculation and surmise. That death, with all the *appearances* of being natural, may be the result of criminal agencies is a fearful truth, which carries with it the fullest conviction that *no* means should be dispensed with that can contribute, even in the smallest possible degree, to a perfect, full, and finally successful investigation; *not* with the mere object of avenging the wrong, or of punishing the guilty for his guilt-sake, but for the higher purpose of taking from the evil-disposed, the hope of even possible impunity, and of enhancing the protection of life in the highest possible degree.

"Death, at all times, when not strictly instantaneous, whether occasioned by violence, by asphyxia, by poison, or by whatever cause, must be looked upon as the result of *disease* produced by such causes; the consequent sufferings, and the disturbance of vital functions for the time being, (however short,) constitute a series of *symptoms*, indicating the *character of the injury inflicted*, as the phenomena of *fever*, for example, indicate its *existence* and its *kind*. These symptoms, in the one instance as in the other, it is especially the province of the faculty to comprehend; they are the indications whence the *prima facie* intimations of the cause of death are to be derived, and it is only by persons conversant with such symptoms and their terminations, that accurate deductions can be drawn. We perceive, however, as if in disregard of this important truth, that outward and mere circumstantial appearances are often relied upon, and this, unhappily, the more readily, where bodily ill health has preceded the catastrophe; that evidence of prior disease is not unfrequently received as proof of death from *that* disease, and, of consequence, by natural causes; but who that calls to mind the craftiness and the wariness, and sometimes the consummate talent and ingenuity of the perpetrators of crime, can otherwise than tremble at a system which diminishes the safeguard of vigilance where need of protection is the greatest, a system which virtually suggests to the cunning who lie in wait, the opportunity favourable to their guilty designs; which holds out the broad hope, at least, if not the appearance of certainty, that their criminal

agents under cover of pre-existing indisposition, may exercise their influence in secret, and that the effects of the poison and of the disease may so *blend* in their operation, that the guilt and infamy of murder may find shelter, under an apparent dispensation of Providence."

We are not aware what Dr. Chowne's opinion may be on the expediency of having a medical man for *coroner*, but the following extracts from the Appendix to his Oration shew very clearly that a lawyer is the fitter person to fill that office, which he properly describes to be "strictly *judicial*." The evil he points out of a coroner giving evidence to the jury himself, instead of summing up the testimony of others, is precisely that into which a medical coroner would be likely to fall, and the greater his ability, the more would he be liable to break through the rule laid down by Dr. Chowne.

"The coroner, (whether a member of the medical or of any other profession, or be his vocation what it may,) holds an office the duties of which, on such occasions, are strictly *judicial*, and, however great may be his skill in any particular branch of knowledge, such skill does not render less necessary the evidence of competent witnesses, even when questions connected with the particular branch in which he may be versed, are embraced in the inquiry.

"Where matter of skill and judgment is involved, a person competent to give an opinion, may be asked what that opinion is, —thus an engineer may be called to say what in his opinion, was the cause of an harbour being blocked up.' *Folkes v. Chad*, 3 Dougl. 157; 1 Phill. Ev. 276; 4 T. R. 498, S. C. 'Many nice points,' observes Lord Mansfield, 'may arise as to forgery, and, as to the impression of seals, whether the impression was made from the seal itself, or from an impression in wax. In such cases I cannot say that the opinion of seal makers is not to be taken.' *Foulkes v. Chad*, 3 Dougl. 159. 'So the opinion of a ship-builder, on a question of seaworthiness.' *Thornton v. Royal Esch. Ass. Co.*, Peake, N. P. C., 25; *Chapman v. Walton*, 10 Bingh. 57.

"It is required, also, that the proceedings of every inquest shall appear in the *record* of such inquest. 'By stat. 7 Geo. 4, c. 64, s. 4, coroners are bound to reduce to writing the evidence given to the jury before them, or so much thereof as shall be material; to certify and subscribe the same.' Jerv. 66.

"So jealous is the law on the subject, that even 'that statute, according to the commentary of a very learned author, did not authorize the coroner to put down his own conceptions of the evidence, * * * but contemplated that the examination of the witnesses should be taken down with the greatest possible accu-

racy, as to all material points of the inquiry.' Jerv. 31.

"Still less does the law contemplate that the coroner shall commit the anomaly of giving evidence himself, or of supplying remarks *founded* on the *facts* of the case, and calculated to have the effect of evidence on the possible issue of the inquisition, yet exempt from the salutary laws to which legitimate evidence is amenable; as the ordeal of counter testimony, and of cross-examination, by the coroner, and jury at least, if not by interested persons and by counsel,—a point in the law of evidence, (notwithstanding the general practice,) which, to use the words of a high legal authority, 'may, when the question arises, be a matter of very grave and serious consideration.' Roscoe's Dig. 53; 2 Stark. Ev. 278, 2d edit; 2 Russ. 661.

"The duties of the jury and of the coroner indeed, have been, by legal authorities, very carefully and properly defined. 'The jury are to investigate and determine upon their oaths all the circumstances connected with the death of the party, * * * and are for this purpose to receive evidence necessary to establish the fact.' Jerv. 228. 'They are neither to expect nor should they be bound by, any specific or direct opinion of the coroner upon the whole of the case, except so far as regards the verdict.' Jerv. 225. 'The verdict should be compounded of the facts as detailed to the jury by witnesses, and the law as stated to them by the court.' Jerv. 226. 'Ad questionem facti, non respondent iudices; ad questionem legis, non respondent juratores.' Vaugh. Rep. 160.

"It is not sufficient that the coroner should abstain from directing upon the faith of opinions expressed by himself, a verdict, the tendency of which is to *inculpate*, and that he would, in *such case*, submit to the jury, evidence which might afterwards be subject to the scrutiny in the Superior Courts; but it is requisite, also, that the coroner should not, upon the faith of his own opinions, direct a verdict, the tendency of which is *exculpatory*, and calculated to supersede ulterior proceedings.

"It is *not* in accordance with the spirit of our laws, *nor* with that of the coroner's inquisition, that the individual who presides, should in matters relating to fact, and not to questions of law, be at once the organ of influential opinions, their sole expositor, and the sole judge of the auto-exposition. It is not assumed by the legislature, that the country must be content to have justice administered in a manner so peculiar, and open to exceptions so grave: neither is the well being of the community more deeply interested in procuring, upon proper, and none but proper evidence, conviction of the guilty, than in guarding against the possibility of unjust immunity, as the consequence of less vigilant inquiry, and of exclusive and less eligible testimony."

Amongst the notes to the oration, is the following:—

"In the case of Sir Theodosius Boughton,

the guilty projector of his death, (a near connexion by marriage,) who was a man of *education and research*, had recourse to a *scientific work* for information and assistance in his diabolical design; to a *scientific process*, (distillation by means of a small still in his possession,) for preparing the murderous potion, (laurel water;) and availed himself of the circumstance of Sir Theodosius being *under medical treatment*, to substitute, for an aperient draught, the deadly poison. It was administered by an innocent hand, and for some time, disease, and not poison, was supposed to be the cause of death. It is a curious circumstance that, 'in the library of the murderer, there happened to be a single number of the *'Philosophical Transactions,'* and of this single number the leaves had been cut only in one place, and this place contained an account of the mode of making laurel water by distillation."

LAW OF LIBEL.

REPORT OF CRIMINAL LAW COMMISSIONERS.

[Continued from p. 456.]

"A remarkable instance, to show the injustice of rejecting evidence of the truth of the statement contained in an alleged libel on a prosecution with a view to repel the presumption of malice, is understood to have been mentioned by the Lord Chancellor (Lord Brougham) in his evidence before a Select Committee of the House of Commons on the law of libel, in which his lordship (before he left the bar) had been counsel. The publisher of a newspaper was prosecuted by indictment for having stated a fact, namely, that a person teaching in a public institution had been convicted of forgery in France, and sent to work in irons. The learned counsel rested his case on negating malice, and for this purpose offered to prove that the statement was merely a reference to a known fact. He produced, with that view, the most satisfactory evidence that could be given, an exemplification under the seal of the Court of the record of the conviction, by which it appeared that the prosecutor had been tried for forgery, convicted and sentenced to work in the galleys, or in the streets with a chain round his leg. The learned judge who presided at the trial rejected the evidence, which by the law he was undoubtedly bound to do, and the defendant was convicted just as if he had been the author of a false, scandalous, and malicious libel.

"Whilst the exclusion of the distinction between truth and falsehood is, with the exception alluded to, and subject to the condition which has been noticed, consistent with the operation of the limited principle avowed by the law of England, such exclusion would obviously be inconsistent with the adoption of a larger principle, viz., the protection of the private individual, in his private capacity, in the enjoyment of his reputation; for there the very nature and character of the injury itself depends, as has been seen, on the truth or

falsehood of the charge, and the truth of the charge must either be a conclusive answer to the complaint of injury to reputation, or must at all events, greatly diminish the extent of the offence, and mitigate the guilt of the offender. Regarding the offence simply as it concerns injury to the individual, it is difficult to say that any one ought to be protected in the enjoyment of that reputation which exists only through ignorance of the truth, and which is therefore in itself false and deceptive. In such a case a guilty individual may suffer privation, but it is impossible to say that he suffers injury from publicity, unless ignorance of the characters of individuals, which cannot possibly be of advantage to the public, can constitute a private right. The law of England, so far from acknowledging the existence of any such right, positively disclaims it, in making the truth of the alleged libel to constitute an absolute and peremptory bar to a civil action to recover a remedy for the defamation in damages. Were the principle of rejecting evidence of the truth of an alleged libel to be ever so well preserved, and which is more difficult to suppose, to be ever so well appreciated by the generality of people, the law would still be defective in moral effect, as making no distinction between a statement of the truth and the publication of a false and wicked invention. This, however, is a distinction which the law of England recognizes, although at the expense of some inconsistency; for it is the practice of the Court of Queen's Bench to refuse a criminal information in respect of a personal libel, unless the applicant deny its truth by affidavit.

"The law of England, therefore, confines itself to the principle of restraining personal calumniators in order to the protection of the public peace. And although so long as the equitable condition already adverted to is observed, the law so limited may not be inconsistent, yet it may justly be considered as insufficient and defective for the reasons already urged, in not adopting larger principles, and extending its operation to the protection of personal reputation for its own sake, and not merely incidentally in providing for the maintenance of the public peace. If the infliction of punishment be not strictly limited by the condition already observed, the law operates unjustly and inconsistently in professing to disregard a distinction which is in fact made, and presuming guilt without due inquiry; if, on the other hand, punishment be so limited, personal reputation is left exposed to danger and destruction without adequate protection. In addition, we may observe that the practical application of a law based on so inefficient a principle, must always be difficult and unpopular. It must be difficult for the Court, in the infliction of punishment, always to bear in mind that the defendant has had no means of establishing the truth of the charge, and therefore that no greater penalty can justly be inflicted than would have been proper had the charge been confessedly true. The generality of mankind are not likely to estimate highly

even the just administration of a law which professes to make no distinction between truth and falsehood, but visits, or professes to visit, the unwarranted publication of either with cold indifference, and affords no greater protection to the innocent than the guilty, so far as concerns the falsity and malice of invention. The practice on criminal informations for libel is by no means consistent with the ordinary principles by which this branch of the penal law is regulated, for whilst according to those principles, and to ordinary practice, the truth or falsity of the alleged libel is deemed to be immaterial, yet, as we have already observed, on an application for a criminal information, a solemn denial of the truth of the alleged libel is an indispensable preliminary. The party against whom the rule *nisi* is granted, has of course the liberty of answering this, as well as any other affidavits on which the motion is founded. But here, as afterwards, he by no means stands on equal terms with his adversary. The applicant to whom the libel relates, always has it in his power to swear as to the truth or falsity of allegations which concern his own conduct, but the party against whom the application is made, may have no actual personal knowledge of the facts—although they may be true, he may have to depend for proof of their truth entirely on the testimony of others, and no means are provided by which he can compel others to make affidavits on the subject, and therefore, for the purpose of the application, the contents of the alleged libel in such a case, though true, must be taken to be false; the information would consequently be granted, and the party put upon his trial. Upon the trial, the defendant being able, as in any other cases, to enforce the attendance of witnesses, might also be able to prove the truth of the alleged libel, but this would be denied him, on the ground that the truth was immaterial. It is, however, impossible that the defendant should not be prejudiced by the previous proceedings, for although proof of the falsehood of the imputation be excluded on the trial, it is well known that the information would not have been granted, if the truth of the alleged libel had not been negatived; and if the truth be in reality immaterial, it is remarkable that a circumstance wholly immaterial should have been made the indispensable condition of granting the criminal information.

"The case then stands thus: if the truth or falsity of the alleged libel be deemed to be immaterial to the offence, the granting or refusing of the criminal information is made to depend on a fact wholly immaterial to the object for the attainment of which the information is to be granted. But it is a fact exceedingly likely to create an undue prejudice against the defendant, and it is one which the defendant has frequently no means of rebutting in answer to the application, and which he is not allowed to rebut where he has the means, by calling witnesses upon the trial. If, on the other hand, the truth or falsity of the alleged libel be *material*, either to the granting the infor-

mation, or to the essence of the offence, the defendant is placed in a disadvantageous position in the first instance, by not having the means afforded him of proving the truth, and rebutting an *ex parte* statement, which usually rests on the mere affidavit of the prosecutor; and he is subject to still greater injustice, in not being allowed to prove upon the trial, facts which are material to the merits of the case, or which at least show that the information ought not to have been granted, and so to remove a prejudice against him. The exclusion of such evidence constitutes the most apparent deviation from principle, when the defence to a criminal information for libel consists of that species of modified justification recognized by the law, where the act is partially but not wholly justified by the occasion, when the publication has been made under circumstances which justify it, provided the publisher acted with a *bonâ fide* intention, and did not use the occasion as a mere cloak for wreaking his malice. In all such cases, the exclusion of the truth is contrary to principle, whatever be the form of proceeding, but the error is greater when the proceeding is by criminal information than in the case of an indictment, for the very nature of the proceeding carries with it a presumption that the contents of the alleged libel are false.

"*Truth of libellous charge.*—The question how far the truth of a defamatory publication of a personal nature ought to be available to protect the publisher from legal consequences, is a subject upon which a great discrepancy of opinion has obtained amongst able lawyers, and concerning which the laws of different nations have established opposite rules. We therefore deem it right to make a few observations on the subject, so far as it relates to the distinctions which we propose to make, believing that although we may differ from many, for whose opinions we entertain great respect, in thinking that the rule of English law, as regards the action for damages, is founded on just principles, yet that even those who do not assent to this position, would approve of the distinction we propose to make in this branch of the criminal law. As regards civil actions for any slander or libel, it is an established rule of the law of England, that the truth of the matter complained of, shall constitute an absolute and complete defence. The English law in this respect differs from the laws of Scotland, France, and some other nations, which, whilst they do not exclude a defence by establishing the *veritas convicii*, as it is termed in the civil law, do not regard it as an absolute and peremptory defence, but only as a circumstance which may, subject to particular conditions, and in connexion with other circumstances, constitute a defence. Some to whose judgment much deference is due, are of opinion that although the truth of a publication should always be admissible for the purpose of enabling a jury to form a just estimate of the publisher's motives, the truth of the publication ought not to operate as a conclusive bar to a prosecution; and in this

opinion we coincide so far as concerns any prosecution founded simply on the tendency of the publication to produce a breach of the public peace; for whether the statement be true or not, it ought not generally and without some special reason to be tolerated, when it tends to the disturbance of the peace. Others, however, think it proper that the truth of the matter published ought not to constitute an absolute defence to a prosecution, although it be founded simply on the principle of protection to private reputation, but only in the absence of express malice, or under defined circumstances, which, co-operating with the truth, shall constitute a complete defence. This further limitation of the effect to be attributed to the proof of the truth of the alleged libel, is, we think, subject to the following amongst other objections.

"First, that in such a case, the benefit of protection to a wrongdoer, would be purchased at a certain public inconvenience by preventing the true characters of delinquents from being known; the effect of which would be to diminish the importance of reputation, and tend to place the profligate, on a level, in this respect, with the most deserving. Secondly, that the proposition assumes that one really guilty of the delinquency imputed, and whose enjoyment of character, rests simply upon other people's want of knowledge, has a legal claim to protection—a position which, for the reasons above stated, appears to us to be salacious. Cases of hardship, may, no doubt, be strongly urged in support of this position; as where a delinquent has, by many years of penitence and exemplary conduct, retrieved his character in society. In such a case, the giving a wanton, malicious, and unnecessary publicity to the circumstances of the offence, might be productive of no real benefit to the public, whilst it would overwhelm the penitent offender with ruin and disgrace. It is further urged, that the affording a possibility to those who have acted criminally, of retrieving their characters, and reinstating themselves in society, by a course of good conduct, affords an inducement favourable to the interests of morality. A striking instance, illustrative of the hardship of such a case, was adduced by the Solicitor-General,* upon the occasion of his making a motion in the House of Commons (18th March, 1834) for 'a committee to consider the present state of the law of libel, and to report their opinion to the House.' 'He would next,' he said, 'mention a case which would strikingly exemplify the inconvenience of the libel law, as regarded proceedings by civil actions. The transaction to which he was about to refer, occurred many years ago, but it had made a deep impression on his mind at the time, and, therefore, he had no doubt, that he should be able to state the circumstances connected with it correctly. A young woman had, in early life, been seduced by a man of title; but after living with him for a certain time, she became ashamed of the course of life she was pursuing, and taking the opportunity

of escaping from it, she retired into a distant part of the country, where her seducer was unable to discover her. She obtained a situation, in which she conducted herself with so much propriety, that she not only gained the good-will of her employers, but was appointed to a responsible situation in a public establishment. Some years after, her seducer discovered the place of her retreat; and having in vain made proposals for the renewal of their intercourse, he hit upon the expedient of depriving her of the means of subsistence, thinking that he should then succeed in his attempt to possess himself again of her person. He, therefore, published in town where she resided, the history of her early life. The consequence was, that the unfortunate woman lost the esteem of the friends whom her subsequent good conduct had procured her, and she was deprived of the appointment, by means of which she obtained her livelihood. Was not this woman entitled to compensation? Yet, if she had brought an action against her persecutor, he would have justified, and she would have been turned out of Court, with the aggravation to her misfortune, of having incurred a useless expense. Was it fit, that the law should remain in such a state?' Whilst it may be admitted, that the act of a party who without necessity, and for malicious purposes, deprived even a delinquent of the benefit of a good reputation subsequently earned, is highly immoral, we are by no means disposed to disapprove of the rule of the law of England, which even in such a case admits a plea of the truth, as an absolute bar to an action to recover damages. As a general principle, we conceive it to be clear that a party really guilty of an imputed offence, cannot be said to have any *right* to that which exists, only through other men's ignorance of the truth. No arguments derivable from the special circumstances of hardship, peculiar to any particular case, are, we think, available to establish such a claim. If, in accordance to general principles of convenience, the conduct of delinquents may be made known, without incurring the hazard of an action for damages, it is evidently impracticable to prescribe any reasonable limit, either in respect of time or other circumstances, which shall for the future enjoin all mankind to silence. It is, however, no part of our duty to consider any question of this nature as it concerns the remedy by action, and we conceive that the distinction which we mean to propose, in respect of criminal liability, will be free from the objection against admitting the truth of a malicious attack upon personal character to constitute a defence, and at the same time, will remove the objection of a contrary nature, to which this branch of the law is at present subject, viz., that the truth or falsity of the communication is regarded as immaterial. Thirdly, that the recognizing such a right, would be wholly inconsistent with the branch of the law, which concerns the civil remedy, and which constitutes the truth, an absolute bar to an action, to recover damages for any personal libel; a principle recognized also by the statutes of 'Scandalum Magna-

* Lord Cottenham.

tum,' which have a criminal, as well as civil operation. Fourthly, that it would be very difficult, if not impracticable, to define the circumstances which ought, in conjunction with the truth of the offensive statement, to constitute a complete justification, and great uncertainty and confusion in the administration of the laws of some other countries, have resulted from the admitting and requiring these mixed ingredients of defence.

"For the truth of this position, we refer to Mr. Borthwick's Treatise on the Law of Libel and Slander, as applied in Scotland, sec. 3. where he treats of the plea of *veritas convicii*. He says, 'having considered most of the situations in which a defender in an action for defamation may be placed which entitle him to plead privilege, we come next to advert to a very important circumstance, in every case of libel or slander, which we have had occasion to mention by anticipation, as an auxiliary in some of the cases of privilege where the presumption of law on the ground of privilege is not completely exculpatory of the defender. This circumstance consists in the truth of the fact for the imputation of which the action is brought.'

"Mr. Borthwick intimates that the question as to the *veritas convicii*, has given rise to more discussion and diversity of opinion in Scotland and other countries, than any other point connected with the doctrine of verbal injuries. And he attributes much of this dispute to the conflicting and unsatisfactory opinions which the commentators upon the Roman law, regarding this subject have delivered. Hence, (he says), we may account for the opposite opinions as to the right to plead, and the effect of proving the *veritas convicii*, which have been supported by Scottish lawyers amidst the great learning and infinite ingenuity to be found in the printed pleadings which have taken place in some of our cases on the subject of defamation. After commenting on the general and peremptory rule of the law of England, which constitutes the truth an absolute bar to an action for damages, the learned writer states a long list of cases litigated in the Scotch courts, from which he concludes that the law of Scotland does not even yet possess any definite settled rules on this important subject.

"Secondly, we proceed to notice some provisions of the existing law, in respect of the act of the party making the communication, and the means used. Offences of this description, as regards personal reputation, are limited to written communications or libels, as contradistinguished from such as are merely oral. Such distinctions are, for reasons which have already been adverted to, of an artificial character, but are strongly supported on grounds of convenience. Other injurious communications, and particularly such as are of a blasphemous or seditious description, are not limited by the same strict rule, and are declared to be criminal, although they be merely oral. It is remarkable that the question whether the mere composing and writing a libel be sufficient to constitute a crime, without any actual publication, does not appear to have ever been

completely settled. It was one much discussed in Sir Francis Burdett's case,^a but as there had in that case been a publication, although some doubt existed whether it could be regarded as a publication within the county in which the offence was alleged to have been committed, the abstract question, whether the mere act of composing and writing a libel without any publication, was not decided. After having investigated the subject with great attention, we have not been able to attain to the conclusion, that the offence was ever deemed to be complete at common law without some publication. The law of libel, as received in the ordinary criminal Courts, was undoubtedly an emanation from the Court of Star Chamber. The doctrine of the Star Chamber was borrowed from the Imperial Law of Rome, concerning the *libellus famosus*, to which the libel of the English law was supposed to bear a close resemblance. After having diligently examined these sources, as well as the modern decisions said to be founded upon them, we have not discovered any authority which we have deemed sufficient to warrant us in including this offence in the Digest.

"It will be seen from our Digest, that even the statute law is not uniform on this point. Some offences are made to consist simply in composing and writing, or printing; whilst in others, publication is essential to the crime.

"Thirdly, we are to consider the provisions of the law of England as regards the materiality of the motive of the party, and the occasion of publishing. The law admits the three classes of cases to which in the discussion of principles we have adverted, and which, as we have already intimated, are founded on distinctions essentially inherent in the subject matter. In the first place, the law recognizes numerous instances in which the occasion renders it necessary to exempt the party from the ordinary penalties to which a libeller is subject. This distinction is founded on the principles to which we have already adverted; it would manifestly be highly inconvenient that the judge, juror, or witness, should be answerable in this form of proceeding, in respect of matter which he was bound to publish in the course of his duty.

"The law does not, however, afford any very definite rule or test for determining the extent to which the principles which render this distinction necessary are to operate. We have, therefore, pursued the following as the safest course. We have endeavoured to extract from precedents and authorities, such a general and comprehensive rule upon the subject, as they seem to warrant. We have also digested the decided cases to be found in the books of reports, relating to this branch of the subject. It will remain for subsequent consideration, whether it will be convenient to retain the one or the other of these, or both of them, adopting the decided cases so digested, and also the further general rule to be applied to any other instances which may fall within the same principle.

^a 4 Barn. & Ald. 95.

"With respect to this class of communications, where the occasion wholly exempts the parties who make them from criminal liability, there is one instance which peculiarly calls for remark, as well on account of its importance, as the discrepancy of authority on the subject. We advert to the rule so frequently recognized, which justifies or excuses, or perhaps more properly warrants and authorizes, true reports of judicial proceedings. The principles which support such a rule, are too plain to require observation or comment, they apply with peculiar force to the exigencies of a country, where a system of unwritten law prevails to a great extent, and consequently where it is most essential that those proceedings which are evidence of the law itself should be known to all, and that except in some instances of exception, where restraint is necessary on special and peculiar grounds, great latitude ought to be afforded in respect of such communications. . . .
[To be continued.]

EXAMINATION OF ARTICLED CLERKS.

The expediency of an examination no one can question who has the welfare of the profession at heart, and the only question for decision is, the mode of conducting it. I think the present system is one against which no serious objection can be raised; but there is much hardship with respect to those candidates who have served their time in the country. If I understand this matter correctly, the candidates are required to answer under three of the five heads of questions, and two heads out of the three must be Common Law and the Practice of the Courts, and Equity; the third is therefore left to the option of the candidate. Now one of the most important, if not the most important, branch of the law, is that of conveyancing; and yet, from the present system of examination, it seems as if it went for nothing. I would not for an instant pretend to dictate to those gentlemen who so kindly undertake to conduct the examination; but I cannot help expressing my surprise that a knowledge of the practice both of the Courts of Law and Equity should have such an undue weight or importance attached to it, when the intricate and most essential science of conveyancing is altogether disregarded. As an embryo lawyer I will at once go to an authority for these remarks, and refer you to Chap. 3 of that little but valuable work "The Articled Clerk's Manual," where I read "that a man may never bring an action at law, or file a bill in equity, during the whole course of his life, but he is always the possessor of some portion of property." And after stating a few instances in which an acquaintance with the laws of property may be requisite even to a non-professional, it goes on to state, "but if an acquaintance with the laws of property be an agreeable accomplishment to the man of the world, to the legal practitioner, of whatever class, it is indispensable." And then it goes on to shew the "*absolute necessity*" there is for the barrister and the student for the bar to

possess a familiarity with these laws; and proceeds to state that "to the solicitor and attorney, and to those who are qualifying themselves for that branch of the profession, it is at least *requisite*." And then are pointed out the important duties of the purchaser and vendor's solicitor; and afterwards, alluding to these duties, observes, "these duties alone, to be efficiently discharged, require *no inconsiderable* knowledge of the laws of property, and the formal language of legal instruments; and the solicitor must remember that he is positively responsible to his client for fulfilling this portion of his labours faithfully and correctly, and that he can in no manner avoid the penalties to which his neglect or ignorance in these particulars will expose him."

A COUNTRY ARTICLED CLERK.

[The Examiners are required by the rule of Court to testify that the candidate is fit and capable to act as an attorney and solicitor. They cannot do this without sufficient evidence. There is no doubt of the great importance of a knowledge of the law of property, and the practice of conveyancing, but it is an advantage to the candidate to afford him the choice of the several other branches. An able examination in conveyancing would, no doubt, tell in his favor, much more than in criminal law. Ed.]

REPORT ON PRIVATE BILLS IN THE HOUSE OF COMMONS.

The Select Committee of the House of Commons, appointed to consider whether any and what improvement could be adopted in the mode of conducting private business, reported on the 1st October that they had agreed on the following resolutions:—

"That a printed bill shall be annexed to the petition for leave to bring in any private bill, and that the petition shall refer to such annexed bill, and not enter into any of the particulars of the contents of the bill.

"That the petition and the annexed bill be referred to the committee on petitions for private bills.

"That in consideration of the necessity of preparing and printing such private bill, so as to annex it to the petition for leave to bring in the bill, the period for presenting such petitions for private bills be twenty-one days after the first Friday in every session of parliament.

"That in case of any application for a private bill relating to England, the committee may admit proof of the compliance with the standing orders which refer to the affixing to the church doors the requisite notices, on the production of affidavits sworn before any justices in petty sessions assembled, in each division within which the churches on which the notices have been affixed, shall be respectively situated."

In our next Number we shall state the Resolutions of the House on this Report, and other points relating to Private Bills.

SUPERIOR COURTS.

Vice Chancellor's Court.

PRACTICE.—LIMITED ADMINISTRATION.—COSTS.

Where a limited administration has been obtained, upon a representation of a party having died intestate, and the widow of the deceased only was cited, although it appears by the answer, that he left a will by which he had named executors, the Court will not recognize proceedings taken under such a grant.

If a motion for payment of money into Court is refused, it is a rule that the party applying should pay the costs, as he ought not to move without having a very clear case.

This was a motion for payment into Court of a sum of 127*l.*, admitted by the defendant's answer to have been received by him on account of the mortgaged property mentioned in the pleadings, and also for the production of certain deeds and papers, admitted to be in the defendant's possession. From the statements in the bill, it appeared that in 1832 a decree was obtained by the plaintiff at the Rolls for a reference to the Master, to take an account of the principal and interest due to a person named Parkes, in respect of a mortgage, which had been executed to him upon the property in question, and of all sums of money which had been received by him on account thereof. In pursuance of this decree the Master made his report, whereby he certified that the mortgage had been satisfied; but notwithstanding this, Parkes afterwards made an absolute conveyance of the property to the defendant, who admitted by his answer that he had received 127*l.* for rents and profits. Parkes died shortly after the date of the Master's report, and in order to continue the proceedings in the suit, the plaintiff had procured a limited administration to be granted to a Mr. Bruce.

The defendant resisted the motion, upon the ground of the limited administration being void, and the proceedings having, therefore, been improperly continued.

Teed, in support of the motion urged, that as the Master had found nothing to be due to Parkes, and a decree had been obtained in the original cause, by which it was declared that Parkes had no claim, and as the defendant claimed through Parkes, he was bound to account for all monies received by him, in respect of the mortgaged property, and to deliver up all deeds relating to it in his possession.

Wheffield and *Mc Donnell*, *contra*, stated that the defendant had *bond fide* paid his money to Parkes; that Parkes having made a will, and appointed an executor, the limited administration having been obtained with only citing the widow, was nugatory; notwithstanding which, the plaintiff had gone on taking the accounts before the Master, against the limited administration, and obtained a report in his favor. He then filed a supplemental bill against the defendant, seeking to have these accounts acknowledged, as if the whole pro-

ceedings had been perfectly regular, whereas in the absence of the executor, not a step could properly be taken.

Teed, in reply, said, that the defendant admitted by his answer that he was cognizant of the proceedings in the original suit, and that his solicitor had notice of the mortgage. With regard to the alleged will of Parkes, a mere statement in the defendant's answer as to its existence was not sufficient, for *prima facie* the administration was good, and the only evidence the Court could take notice of was a probate.

The Vice Chancellor said, he must consider that the suggestion upon which the administration had been granted was false; and if the plaintiff at the hearing admitted that to be the case, he could not obtain a decree. This motion was made upon the answer, and by the statements contained in it there was sufficient evidence that the plaintiff had not a title, for the only way in which it appeared that Parkes had been overpaid was by proceedings taken in a suit where the proper party was not before the Court. The motion must, therefore, be dismissed, and as such a motion should not be made without a very clear case, it must also be dismissed with costs.

Stirens v. Jenkins, 8th May, 1841.

Queen's Bench.

[Before the four Judges.]

MORTGAGE.—TRESPASS.

A. demised to B., by way of mortgage, certain premises, and the fixtures, the mortgage to be subject to certain provisions in the deed itself. One of these was, that if on a day named the money due was repaid to B., he should reconvey, free from all incumbrances; the other, that if the money was not then paid, B. might enter and sell. A. remained in possession (there being no covenant that he should do so), and before the arrival of the day, his goods and the fixtures in the house where taken by the sheriff: Held, that trespass was not the proper form of action for the mortgagee.

Trespass for breaking and entering the plaintiff's house, and taking and carrying away the plaintiff's goods. Pleas, first, Not Guilty; secondly, that the goods were not the goods of the plaintiff. A verdict was given for the plaintiff, and a rule was afterwards obtained to set it aside, and enter a nonsuit.

Mr. Kelly and *Mr. James* shewed cause.—

This is a question between the sheriff, who claims as execution creditor to a man named Fawkes, and a person who claims them by virtue of a mortgage made to him on the 4th of March, 1838, by Fawkes, a tenant for years of the premises mortgaged. The point to be considered is, whether case will lie for an injury to the reversionary interest of the plaintiff, or whether trespass is maintainable for the seizure. The mortgage recites that it was given for a debt of 272*l.*, due from Fawkes to the plaintiff, "to have and to hold the messuage and premises to James Wheeler, hence-

forth and during the remainder of a term which is now unexpired, of twenty-one years." So far, therefore, this appears to be a demise. But then Fawkes "further assigns, &c. all the fixtures, utensils, &c. to the plaintiff, to have and to hold the same to their own use," subject to certain provisions thereafter contained. One of the provisions was, that "if Fawkes shall pay the money due on the 24th of June, in a year stated, then the plaintiff and his executors shall and will, at the expence of Fawkes, reconvey the premises to him or them as he or they shall direct, free from all incumbrances, &c." The defendants entered before the arrival of that day. Then follows the further provision, "that if default shall be made in the payment of the said sum of money, then it shall be lawful for the plaintiff to enter and take the premises, and of his sole authority to sell or let the premises, and all the fixtures hereby assigned, by public auction, for the best price he can get for the same." The effect of this is to make an immediate grant of the premises, and an immediate assignment of the personal effects to the plaintiff. The provisions for payment and for default of payment, affect both in an equal degree. If the mortgagor is, as it is clear he is, in possession under an absolute assignment like this, he must be treated in possession as a tenant by sufferance. That would give him a right to maintain an action of trespass. *Doe d. Roby v. Macey*,^a shews that a mortgagee may recover against the mortgagor, without a notice to quit, on a demand of possession; and in *Hitchman v. Walton*,^b Mr. Baron Parke observed that it was sufficient for the determination of that case to say that it had been decided that the mortgagee might treat the mortgagor as a tenant at will. [Mr. Justice Patteson.—Is it not necessary for you to go the length of shewing that the mortgagee is actually in possession, for without that he cannot maintain trespass against a wrong doer.] If the mortgagor has not an interest carved out of the term, the possession of the mortgagor is the possession of the mortgagee. Coote on Mortgages.^c In *Birch v. Wright*, Mr. Justice Buller fully expressed^d his opinion of the relative rights and characters of these parties, and distinctly declared that "the possession of the mortgagor is the possession of the mortgagee; and as to the inheritance, they have but one title between them. The mortgagee has a right to the actual possession whenever he pleases; he may bring his ejectment at any moment that he will, and he is entitled to the estate as it is, with all the crops growing on it." *Martindale v. Booth*,^e shews that a deed of this sort is not void merely because the person making it remains in possession. The mortgagor parts with all the interest he has, which immediately vests in the mortgagee.—[Mr. Justice Patte-

son.—Suppose that I am in possession of premises, and that I am turned out by force, I may turn out the person who has ejected me, but while I am out can I maintain trespass against a stranger?] *Bertie v. Beaumont*,^f shews that the possession of a house is deemed the possession of the master, though the house is in the actual possession of the servant, who is paid less wages on account of living in the house. Such an action might therefore be maintained. As to the question of fixtures, the case of *Longstaffe v. Meagre*,^g may be referred to. In that case the lessee of a house containing fixtures, first assigned the premises by way of mortgage, not mentioning the fixtures, and then made another assignment to trustees of all his estate and effects. The principal and interest being due on the mortgage, the mortgagee took forcible possession of the house, and refused to deliver up the fixtures, and the trustees were held not entitled to bring trover. There being no estate in law possessed by the mortgagor here, the mere license to continue in possession does not give him any title to maintain trespass. That right is in the mortgagee. And respecting the moveable property it is clear that there has been an absolute assignment of the property, and therefore the assignee is the proper person to maintain trespass.

Mr. Taprell, in support of the rule.—Trespass and case are strongly distinguished from each other, and the former cannot be maintained where, as in this case, the plaintiff sues in respect of a mere *interesse termini*. All the authorities shew that actual possession is the test by which to decide whether trespass is or is not maintainable. Here the mortgagor alone was in actual possession, and the damage done, if any, was to the reversionary interest of the mortgagee. In *Hitchman v. Walton*,^b the question was as to the right of assignees over fixtures, and whether they were to be considered in the order and disposition of the bankrupt, and the mortgagor was neither treated as a tenant nor as a servant of the mortgagee. The case depended on the effect of the bankrupt laws upon the bankrupt's possession of the property. That case cannot govern the present. The fixtures must be considered as part of the freehold, so that there could not be an immediate acceptance of them any more than of the freehold itself. In *Colegreave v. Dias Santos*,^h fixtures were held to pass to a purchaser of a house, but that was after the vendor had given up possession, when he was merely stopped from re-demanding them; without that fact they would not have passed. The word "agree" in the provision, must be taken to be the engagement of both parties, and the word "premises," likewise used there, must be deemed to include the fixtures. In Comyn's Digest, there are several

^a 3 M. & R. 107.

^b 4 Mee. & W. 414; 1 Horn. & Hurls. 374.

^c Page 327.

^d 1 Term. Rep. 383.

^e 3 Barn. & Adol. 498.

^f 16 East, 33.

^g 2 Adol. & Ell. 167.

^h 4 Mee. & Wels. 414; 1 Horn & Hurst. 374.

ⁱ 2 Barn. & Cress. 76.

^j Covenant A. 2.

ral authorities referred to, which shew what is to be deemed a covenant affecting the land. *Sampson v. Easterby*,^k shews that by such a covenant as this, nothing but a bare interest passes. That case itself recognised and adopted the rule stated by Lord Gifford in the case of *Saltoun v. Houston*,^l that if in any deed there is a clear agreement to do any act, an action of covenant may be maintained upon it. *Stevens' case*,^m and the *Duke of St. Albans v. Ellis*,ⁿ are to the same effect. The plaintiff here had a mere interest, and not a possession, and therefore cannot maintain an action against these defendants in the present form.

Cur. adv. vult.

Lord Denman, C. J.—This was an action of trespass for breaking the plaintiff's close and taking his goods, to which the defendants pleaded, first, not guilty; and secondly, that the plaintiff was not possessed, &c. The defendant, as sheriff of Middlesex, had committed the act which was the subject of the present action. A person named Fawkes was tenant for years of the premises, and he had demised them by way of mortgage to the plaintiff. This demise was to begin on the 24th of March, 1838, for the remainder of an unexpired term, wanting one day, and subject to certain provisions thereafter mentioned. First, there was a provision for reconveyance on payment of the mortgage money and interest on the 24th of June; and secondly, that if payment was not made on that day, it should be lawful for the mortgagee to enter and sell. There was no covenant that Fawkes should remain in possession till the 24th of June, but he did so, and the alleged trespass was committed before that day. On the whole deed, we are of opinion that the plaintiff's right did not attach, and therefore that the verdict for him on the second plea was wrong, and that a nonsuit must be entered.

Rule absolute.—*Wheeler v. Montefiore and another*, T. T. 1841. Q. B. F. J.

Queen's Bench Practice Court.

ENTERING UP JUDGMENT ON WARRANT OF ATTORNEY.—ADMINISTRATRIX OF PUBLIC OFFICER.—BANKING COMPANY.—RULE NISI.

A warrant of attorney having been given by a firm to the public officer of a banking company, appointed under the 7 Geo. 4, c. 46, in respect of a loan of money made by the banking company, it being expressly stated therein that in case of a breach of the defeasance, judgment may be entered up "by his executors or administrators," held, that the authority to enter up judgment was not merely personal, but survived to his administratrix. The administratrix sought to enter up judgment, under a prerogative administration in the province of Canterbury, but it appeared that several of

the defendants were resident in the province of York: Held, that the administratrix was entitled to enter up judgment, the case being unlike one where an applicant sought to recover a simple contract debt, which would be, bonum notabile in the province where the debtor resided, as the judgment was to be entered up in the province of Canterbury.

Under such circumstances, the warrant of attorney being less than ten years old, the Court refused to grant a rule absolute in the first instance for judgment.

This was a motion for leave to enter up judgment on a warrant of attorney, which had been given in the year 1835, and was consequently less than ten years old. The warrant of attorney had been given by the firm of Holiday & Co., which consisted of twenty-two persons, in respect of certain advances of money made to them by the Yorkshire District Banking Company, to a person named Edwards, at that time manager of the bank, and in the event of any breach of the defeasance, it authorized him, "his executors or administrators," to enter up judgment. Edwards died in the latter part of 1835, but advances were made by the company after, as well as before his death, all of which were covered by the warrant of attorney. The present application was made on behalf of the widow of Edwards, who had taken out a prerogative administration in the province of Canterbury. A question arose, whether under the 1 R. G., H. T. 2 W. 4, s. 73, (1 Dowl. P. C. 192,) the applicant was entitled to a rule absolute, or a rule nisi only.

Per Curiam.—A rule nisi only should be granted under the circumstances of the case.

Cause was subsequently shewn, and it was contended that the plaintiff was unauthorized to call upon the Court to sanction the proceeding which she proposed to take. She had taken out only a prerogative administration in the province of Canterbury, the debtors by whom the warrant of attorney had been given being resident at Leeds, which was in the province of York. The authorities shewed that the debt being a simple contract was *bona notabilia* in the province where the debtor lived at the time of the creditor's death. 1 Roll. Abr. 909, (H.) 4; 1 Will. Ex. 177, and a prerogative administration in the province of Canterbury would not, therefore, clothe the applicant with sufficient authority to enable her to take the step which she now proposed. *Coles, executor v. Haden*, Barnes, 44, was the only authority, which could be adduced in support of this motion; but that case which was somewhat similar in its nature to the present had not been recognized, and the rule which had been obtained had been made absolute upon an affidavit of service, no cause being shewn. *Henshall, executor v. Matthew*, 1 Dowl. P. C. 217, was also cited. But there was a second objection, which was fatal to this motion. Such a power as was granted by the warrant of attorney would not survive to

^k 9 Barn. & Cress. 505.

^l 1 Bing. 433.

^m 1 Leon. pl. 457.

ⁿ 16 East. 352.

the administratrix of a public officer. The provisions of the 7 Geo. 4, c. 46, s. 9, which empowered co-partnerships of bankers to sue and be sued in the name of their public officers, seemed to shew that the exercise of the power given to the officer must be merely personal, but at all events the Court would consider the condition of the parties before such a motion was granted. From the affidavits, it appeared, that many of the original members of the firm had long since ceased to be interested in its proceedings, and the Court would not, therefore, make the rule absolute, at all events except upon equitable terms.

In support of the rule, it was urged, that the objection last taken was disposed of by the terms of the instrument, which declared that the judgment might be entered up at the instance of the administratrix of Edwards. It must be assumed that the administration under which she acted was a correct one, in default of anything being affirmatively shewn on the other side to negative such a fact, but it did not appear from any statement which was made in the affidavits that Leeds was in the province of York, and the Court would not take judicial notice that it was so. 1 Chit. Plead. 4 ed. p. 201. The Court would, therefore, make the rule absolute.

Per Curiam.—It is sufficiently shewn by the affidavits that Leeds is in the province of York.

Cur. adv. vult.

Wightman, J., subsequently gave judgment. The objection to the insufficiency of the title of the applicant appears to me to require some consideration. I should agree that the objection must prevail if the administratrix had sought under the administration to receive a simple contract debt, because simple contract debts are *bona notabilia* in the province where the debtor resides, and here it appears he resided in the province of York, while the administration was granted in that of Canterbury, but I think that the administration here is sufficient to authorize this application. The warrant of attorney is merely an authority to do a thing which is to be done in the province of Canterbury. The judgment is only to be entered in that province. It would be totally inefficacious, if the administratrix could not exercise that authority, under a prerogative administration from Canterbury, because an administration from the province of York would give him no authority to exercise a power, would be only available in the province of Canterbury. The case, therefore, is not within the rule which applies to simple contract debts, for this is a new power to enter up a judgment, and not to recover a debt. Upon the second question, who, through the administrators of such a party, could enter up such a judgment, I think that the terms of the warrant of attorney are decisive, and without giving any decision upon the abstract question whether such a right as this would survive to the administratrix of a nominal plaintiff, appointed under the Banking Company's Act, or considering the effect of the case in Barnes,

or the position of the applicant, I think that this rule must be made absolute.

Knowles, in support of the rule.

Addison, contra.

Rule absolute.—*Edwards, administratrix v. Holiday and others*, T. T. 1841. Q. B. P. C.

LAW BILLS IN PARLIAMENT.

Royal Assents.

5th October, 1841.

Administration of Justice (in Equity).
Expiring Laws.
Lunatics.

6th October.

Poor Law Act Continuance.

House of Lords.

For consolidating and amending the Laws relating to Attorneys and Solicitors.

The Master of the Rolls.

For enabling Incumbents to grant Leases.

The Bishop of London.

For enabling Ecclesiastical Corporations to grant Leases.

The Bishop of London.

For the improvement of Boroughs.

Lord Normanby.

For regulating Buildings.

Lord Normanby.

For the improvement of Drainage.

Lord Normanby.

House of Commons.

For the better Administration of Justice in the House of Lords and the Privy Council.

Sir E. Sugden.

For a Committee to inquire into the operation of the Acts for suspending in certain Cases the Usury Laws.

Sir E. Sugden.

To amend the Law of Landlord and Tenant.

Mr. Sharman Crawford.

THE EDITOR'S LETTER BOX.

It seems quite clear that the diploma of Civil Engineer at the University of London or Durham, will not rank with a Bachelor of Arts or Laws, so as to enable the candidate to be admitted an attorney of the Courts at Westminster, on serving a clerkship of three, instead of five years.

A correspondent informs us on the subject of stamping a warrant of attorney after its execution, that executing warrants of attorney on plain paper, is by no means uncommon in practice; that during the present year he has taken three, so executed, to the Stamp Office, two on the twenty-first day after execution, without a question being asked beyond the very common one upon presenting any document to the solicitor; after giving him a description of it.—“I suppose you want such a stamp,” naming the value, which he has immediately marked upon it; and the commissioners also sign without any inquiry.

The Letters of A. “Civis;” A. M. C.; A. P.; “Spes;” and “A Landlord;” have been received.

The communications of “Legalis;” E. C.; and “An Attorney;” are acceptable.

The Legal Observer.

SATURDAY, OCTOBER 16, 1841.

— "Quod magis ad nos
Pertinet, et desicire malum est, agitamus.

HORAT.

WHAT OFFICIAL SALARIES ARE ASSIGNABLE.

OFFICES may be held in fee, or for life, or for a term of years, or during pleasure only, save only that offices of public trust cannot be granted for a term of years, especially if they concern the administration of justice, for then they might, perhaps, vest in executors or administrators.^a And by the stat. 5 & 6 Edw. III., c. 16, extended by stat. 49 Geo. III., c. 26, no public office can be sold, under pain of disability to dispose of or hold it.

It is accordingly well settled that an officer in the king's service cannot assign his half-pay, which depends on the bounty of the Crown, and is a retaining payment for future service.^b Neither can such officer pledge his commission.^c

The distinction which obtains in all this class of cases is, whether it is necessary for the interest of the public, that the pay or profit, or salary, should be continued to the person holding the office or not. If this be necessary, the allowance cannot be assigned; but otherwise, if it be not necessary.

Thus a pension for past service may be aliened, but not one for the performance of future duties,^d unless the grant be to the pensioner and his assigns.^e And the profits arising from offices connected with the administration of justice, or requiring

personal skill and experience, as the office of clerk of the peace;^f or the office of a registrar of a consistorial court, though a deputy may be appointed, cannot be assigned.^g The public is interested, not only in the performance, from time to time, of the duties, but also in the fit state of preparation of the party having to perform them.^h

It follows, therefore, that the salaries of the Judges and other civil officers cannot be assigned;ⁱ and this principle has been extended, on the same ground, to a salary of the assistant parliamentary counsel to the Treasury.^j

But where the office is purely ministerial, the fees or salary belonging to it may be assigned. Thus the fees of clerk to the deputy registrar of a Prerogative Court may be assigned,^k and the profits of office which merely require common diligence, as king's printer, park-keeper, &c., may be assigned.^l

The captor of military prize money may effectually assign it before any interest in it has been vested in him by a grant from the Crown;^m for here, obviously, no injury is done to the public. But a compensation granted to a public civil officer on the reduction of offices under the 4 & 5 W. IV., c. 24, is not assignable. By the stat. it is enacted, "that every person to whom any compen-

^a 9 Co. 97.

^b *Flarty v. Odum*, 3 T. R. 681; *Lidderdale v. Duke of Montrose*, 4 T. R. 248; *Priddy v. Rose*, 3 Mer. 102; *Stone v. Lidderdale*, 2 Anst. 533.

^c *Collyer v. Fallon*, 1 Cov. Pow. Mort. 59, n. (c.)

^d *Barwick v. Reade*, 1 H. B. 627; *Davis v. Duke of Marlborough*, 1 Swanst. 174; 2 Wils. C. C. 130; S. C. *Ex parte Battine*, 4 B. & Adol. 690; *Palmer v. Bate*, 2 Brod. & B. 673; 6 Moo. 28; S. C. *Gibson v. East India Company*, 5 Bing. N. S. 262.

^e *McCarthy v. Gould*, 1 Ball. & B. 389.

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^f *Palmer v. Vaughan*, 2 Swanst. 173; *Palmer v. Bate*, ubi. sup.

^g *Wheeler v. Trotter*, 3 Swanst. 174.

^h *Per Lord Langdale*, M. R., 2 Beav. 544; and see ante, p. 418.

ⁱ *Sir George Reynolds's case*, 9 Co. 97 (b); *Meade v. Lenthal*, Cro. Car. 587.

^j *Cooper v. Reilly*, 2 Sim. 560; S. C. 1 Russ. & M. 560.

^k *Aston v. Gwinnell*, 3 Yo. & Jer. 136.

^l *Veale v. Prior*, Hard. 352; *Zouch v. Sir E. Moore*, 2 Roll. Rep. 274; Bro. Ab. Leases, 40; and see *Greville v. Jones*, 9 B. & C. 462.

^m *Alexander v. Duke of Wellington*, 2 Russ. & M. 35.

sation or allowance, in consequence of the abolition or reduction of office, shall hereafter be granted, shall at all times, when called upon, be liable to fill, in any part of his Majesty's dominions in which he shall have already served, any public office or situation under the Crown, for which his previous public services may render him eligible; and that if he shall decline when called upon so to do, to take upon himself such office or situation, and execute the duties thereof satisfactorily, being in a competent state of health, he shall forfeit his right to any compensation or allowance which may have been granted to him in respect of any former services." And by s. 30, it is enacted "that nothing in this act contained shall extend, or be construed to extend, to give any person an absolute right of compensation for past services, or to any superannuation or retiring allowance under this act, or to deprive the Commissioners of his Majesty's Treasury, and the heads or principal officers of the respective departments, of their power and authority to dismiss any person from the public service without compensation."

And the Court, therefore, put this right to compensation upon the same footing as half-pay. Lord Abinger, C. B.—"The Court are of opinion that this pension was not assignable. It stands upon the same footing as the half-pay of an officer in the army. It is fit that the public servants should retain the means of a decent subsistence, without being exposed to the temptations of poverty. Besides, the defendant may be assigning what he has no right to receive; for his pension subsists only during pleasure, and it depends on Parliament whether it shall be continued or not. The rule to enter a nonsuit must be absolute." Parke, B.—"I concur in the opinion that this action is not maintainable, upon the ground that on principles of public policy, the allowance granted to the defendant was not assignable by him. It is not necessary in this case to determine whether this is an allowance to which the defendant is entitled as a matter of indefeasible right, or whether it is payable only during pleasure; although I have a strong impression that it subsists only during the joint pleasure of the Treasury and of Parliament, by which the fund for its payment is provided. On the other hand, even if it be payable only during pleasure, it appears to me that it is not, therefore, in point of law, the less assignable, however little its value would be in consequence of its being liable to be withdrawn at any moment. But, viewing the matter on the ground of

public policy, we are to look, not so much at the tenure of this pension, whether it is held for life, or during pleasure, as whether it is, in either case, such a one as the law ought to allow to be assigned. The correct distinction made in the cases on this subject is, that a man may always assign a pension given to him entirely as a compensation for past services, whether granted to him for life, or merely during the pleasure of others. In such a case, the assignee acquires a title to it both in equity and at law, and may recover back any sums received in respect of it by the assignor, after the date of the assignment. But where the pension is granted, not exclusively for past services, but as a consideration for some continuing duty or service, although the amount of it may be influenced by the length of the service which the party has already performed, it is against the policy of the law that it should be assignable. Under the terms of the statute 4 & 5 W. IV., c. 24, the party, if an inferior officer, is liable at any time to be called upon to serve the public again; in the mean time, a reduced allowance is awarded to him, in consideration of his holding himself in readiness for that purpose. This is the case of an officer who has received a compensation on account of a reduction in the number of the persons of his class employed in the office to which he belonged; and by the terms of the 19th section, all such persons are bound to give their services again to the public if called upon, and in the event of their refusal to do so, are liable to forfeit their pension altogether. I cannot assent to the argument that this pension cannot be taken away; for it appears to me to be clear from the 30th section of the act, that this gentleman, so far as the question of his retainer or discharge is concerned, is exactly in the same position as if he were in full employment or on full pay; that he is equally liable to be dismissed at any moment, either for positive misconduct, or on any ground which would render him an unfit person to remain in the service of the Crown. I think the true view of this case is, that the defendant is still to be considered as in the public service, although not at present actually performing any duty in it, and that the compensation allotted to him under this act is by way of salary, the object of which is to enable him to maintain such a position in life as will save him from the necessity of risking his character, by incurring those temptations, which persons reduced to poverty are necessarily exposed to, and which would render him an unfit

person to be again employed as a servant of the Crown. For this purpose, public policy requires that he should not be permitted to assign it away."

In conformity with these principles is the case of *Hill and others v. Paul*, which was decided by the House of Lords, on the 6th of October last, and of which the circumstances were as follows :

"One Robert Hill had been appointed to the office of registrar of the Sasines of the county of Renfrew. This was a public office, and a salary was attached to it. Robert Hill assigned the profits of this office to the appellants, subject to a payment to him of 300*l.* a year. He became indebted, and executed a trust deed for the benefit of creditors. The trustees of his creditors demanded that the profits of the office in question should be treated as part of the assets. The Court below had permitted this, and had made a decree in favor of the trustees now represented by the respondent. The appellants brought up this decision by way of appeal to this house.

"Lord Cottenham said, that he had felt considerable anxiety in deciding this case, as he had come to a conclusion at variance with that of the opinion of the judges of the Court below. His lordship then went fully into the terms of the trust deed, and from them, considering what were the circumstances of the parties at the time of its execution, expressed his clear opinion that no title to the profits of the office passed by that deed. On this point, which was the one argued at the bar, his decision would proceed; but he could not conclude his observations on the case without intimating that, besides the ground already referred to, as calling on the house for a renewal of the judgment of the Court below, there was another on which he doubted whether the judgment could have been maintained. He meant to say that he much doubted whether the trust deed, even if it had been so framed as to include the profits of this office, could have had force enough to carry them. This office was a public office, and he did not think its income could be thus made over to trustees, but he desired it to be distinctly understood that his judgment did not proceed on that point. The terms of the trust deed were not in themselves sufficient to include the profits of the office, and on that ground he moved that the judgment of the Court below be reversed, the preliminary defences be sustained, and that their lordships should find the appellant entitled to the costs of this suit.

"Agreed to."

The principle then upon which all these cases rest is this. Has the public any interest in the future services of the officer; and do those services require skill or experience in their discharge? If so, the salary or compensation for it cannot be assigned, but, if the public has no interest in his future services, or they do not require skill or experience, then the emoluments or the compensation can be assigned.

A public pension given to a family for great services rendered to the state cannot be assigned."

We have recently discussed the assignability of benefices, with and without cure. See *ante*, pp. 417—419.

THE ANNUAL CERTIFICATE DUTY.

To the Editor of the Legal Observer.

I have been much gratified at seeing the discussion on the certificate duty renewed in your pages, and also at perceiving that the advocate for the tax, A. P., has hitherto met with no supporter. But it appears to me that merely arguing the subject in a professional journal, is not the way to get rid of an impost, grievous in the extreme to attorneys in small practice, of which number I am one, and not the only one by some hundreds. I should think, that if the profession as a body, feel that the duty is degrading, unjust, and oppressive, the plan would be to appoint a deputation to see the Chancellor of the Exchequer, and also to induce some member of the bar in parliament, or any retired or practising solicitor who may have a seat, to broach the matter in the House of Commons. If the Chancellor of the Exchequer and the House coincide that the tax is a moderate one, that it is not oppressive, that it does not compel one profession to contribute more towards the burthens of the state than any other, then we have no alternative but to continue to suffer.

I would say a word or two as to the profits of attorneys. There are few businesses which do not, were the average taken, produce more to their followers, than does the profession of an attorney to him who has been unfortunately doomed to be called "a gentleman, one, &c.," and let it be observed, there are no chances for an attorney to realize, by the pursuit of his profession, those splendid fortunes, which are often the rewards of industry and talent to merchants and traders. The profits of the profession have been for some years past declining, and are nearly every session reduced, and every session we are threatened with still greater losses. It is surely then high time for us to unite together, and endeavour to free ourselves from an unjust tax, the payment of which is most severely felt by the majority among us.

ⁿ *Davis v. Duke of Marlborough*, *ubi. sup.* and see what Lord Langdale says as to this case, *Grenfell v. The Dean and Canon of Windsor*, 2 Bea. 544.

In conclusion, let me ask two questions, first, how would the *bar*, the clergy, or the medical profession, relish a certificate or *licence* tax; and secondly, why does not the Law Society interfere in this momentous question?

LEGALIS.

[We think a statement appeared some time ago of the unsuccessful result of a deputation from the Law Society to the Chancellor of the Exchequer. ED.]

POINTS OF PRACTICE, BY QUESTION AND ANSWER.

BANKRUPTCY—TRADING.

1. Are the declarations of a bankrupt to a party with whom he is dealing, evidence to prove the trading?
2. Will it be sufficient evidence of trading, that the party against whom a fiat is issued, acknowledges himself to be in partnership with one who is a trader, such party being proved to have given directions in the concern, or must acts of buying and selling be proved?
3. A trader was described as a money scrivener, without the general words "dealer and chapman." Can any species of trading be given in evidence?
4. A trader ceases to manufacture, but solicits orders and executes them. Is this a sufficient trading?
5. A person procures orders for goods, buys them of others, and makes out bills in his own name to the customers. Is this a trading?
6. Is a school-master buying boots and shoes, and selling them at an advanced price, a trader within the bankrupt laws?
7. Is the drawer of bills of exchange on his own account, paying a commission and interest for discounting, and borrowing accommodation notes in exchange for his own, an object of the bankrupt laws?
8. Will the purchase of any and what number of lots of timber, constitute a trading?
9. Can a person living out of England, but coming here from time to time, and buying goods which were not sold here, be made a bankrupt?
10. Can a commission of bankrupt be supported on a debt accruing before the bankruptcy became a trader, and an act of bankruptcy committed after he has ceased to be a trader?
11. Can a fiat be supported against a person under age?
12. Can the wife of a convict be made a bankrupt, if she trade on her own account?
13. Can a person whose trading is illegal, as the buying of smuggled goods, be made a bankrupt?
14. Can a farmer who occasionally buys hay, corn, or horses, with a view to sell again for profit, be made a bankrupt?
15. Is a person who rents a brick-ground, and makes bricks for sale, subject to the bankrupt law?

CHANGES IN THE LAW, IN THE LAST SESSION OF PARLIAMENT.

No. I.

ADMINISTRATION OF JUSTICE IN EQUITY. 5 VICT. c. 5.

THE general scope of this act, which was passed on the 5th instant, is as follows:—

1st. It abolishes the jurisdiction of the Court of Exchequer in Equity, and transfers it to the Court of Chancery, making due provision for the funds in court of the suitors, and the regulation of the practice in the suits transferred. Sections 1 to 18 inclusive.

2d. It empowers the appointment of two additional judges assistant to the Lord Chancellor, to be called Vice Chancellors, and prescribes their powers and duties. Sections 19 to 31 inclusive.

3d. It appoints an additional Master in Chancery, four new Registrars, and other officers and clerks. Sections 32 to 34, and 38 to 49 inclusive.

4th. It empowers the payment of salaries, annuities, compensations, expences, &c. Sections 35 to 37, and 50 to 63 inclusive.

The following is the act down to section 31, inclusive; we shall conclude it next week, and add such notes as may be necessary.

An act to make further provisions for the administration of justice. [5th October, 1841.]

1. *The jurisdiction of the Court of Exchequer as a Court of Equity, &c., abolished, and transferred to the Court of Chancery.*—Whereas the business on the plea side of Her Majesty's Court of Exchequer at Westminster has of late years greatly increased, and a transfer to the Court of Chancery of the jurisdiction of the said Court of Exchequer as a Court of Equity would relieve the judges of the said Court of Exchequer, and would otherwise tend to promote the public advantage; be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that on the fifteenth day of October one thousand eight hundred and forty-one, all the power, authority, and jurisdiction of her Majesty's Court of Exchequer at Westminster as a Court of Equity, and all the power, authority, and jurisdiction which shall have been conferred on or committed to the said Court of Exchequer by or under the special authority of any act or acts of parliament, (other than such power, authority, and jurisdiction as shall then be possessed by or be incident to the said Court of Exchequer as a Court of Law, or as shall then be possessed by the said Court of Exchequer as a Court of Revenue, and not heretofore

exercised or exercisable by the same Court sitting as a Court of Equity) shall be, by force of this act, transferred and given to her Majesty's High Court of Chancery, to all intents and purposes, in as full and ample a manner as the same might have been exercised by the said Court of Exchequer if this act had not passed; and the same power, authority, and jurisdiction shall, so far as respects the exercise thereof by the said Court of Exchequer, cease and determine: Provided always, that this act shall not abridge, lessen, or in anywise affect the power, authority, or jurisdiction of or incident to the said Court of Exchequer as a Court of Law, or the power, authority, or jurisdiction of the same Court as a Court of Revenue, not heretofore exercised or exercisable by the same Court sitting as a Court of Equity.

2. *Suits depending and proceedings transferred to Court of Chancery, to be carried on according to the practice of that Court. Writs returnable in Exchequer to be returnable in Chancery. Court of Chancery may direct transferred suits to be carried on according to the practice of either Court.*—And be it enacted, that all suits and matters which on the said fifteenth day of October one thousand eight hundred and forty-one shall be depending in the said Court of Exchequer as a Court of Equity, or under such act or acts of parliament as aforesaid, (except as aforesaid), shall be by force of this act transferred, with all the proceedings therein, to the said Court of Chancery, there to be carried on and prosecuted and dealt with and decided according to the practice of that Court, in the same manner in every respect as if such suits and matters had been originally commenced in the said Court of Chancery; and that all decrees and orders which shall have been made by the said Court of Exchequer in such suits and matters shall, to all intents and purposes, be deemed and taken to be decrees or orders respectively of the said Court of Chancery; and that all writs which shall have been then issued in the same suits and matters, or any of them, returnable in the said Court of Exchequer, shall be by force of this act returnable in the said Court of Chancery: Provided always, that in case it shall appear to the Court of Chancery to be just and expedient that any suit or suits, matter or matters, so transferred to the said Court of Chancery, should be wholly or partially carried on according to or regulated by the present practice of the Court of Exchequer, or that any question or questions arising in the same suit or suits, matter or matters, should be decided with reference to the present practice of the said Court of Exchequer, it shall be lawful for the said Court of Chancery to make such order or orders in relation thereto as to the said Court of Chancery shall seem meet.

3. *Lord Chancellor to make general orders for the taxation of costs, &c., by reason of the transfer.*—And be it enacted, that it shall be lawful for the Lord Chancellor from time to time to make such general orders (as well with

respect to the taxation and allowance of costs as in all other respects) as to him shall seem fit and proper to be made, by reason or in consequence of the transfer hereby made to the said Court of Chancery of such suits and matters as aforesaid, or for carrying the same transfer into complete effect.

4. *Court of Chancery may summarily restrain the Bank of England, &c., from permitting transfer of stock, &c.*—And be it enacted, that on and after the said fifteenth day of October one thousand eight hundred and forty-one, it shall be lawful for the said Court of Chancery, upon the application of any party interested, by motion or petition, in a summary way, without bill filed, to restrain the Governor and Company of the Bank of England, or any other public company, whether incorporated or not, from permitting the transfer of any stock in the public funds, or any stock or shares in any public company, which may be standing in the name or names of any person or persons, or body politic or corporate, in the books of the Governor and Company of the Bank of England, or in the books of any such public company, or from paying any dividend or dividends due or to become due thereon; and every order of the said Court of Chancery upon such motion or petition as aforesaid shall specify the amount of the stock or the particular shares to be affected thereby, and the name or names of the person or persons, body politic or corporate, in which the same shall be standing: Provided always, that the said Court of Chancery shall have full power, upon the application of any party interested, to discharge or vary such order, and to award such costs, upon such application, as to the said Court shall seem fit.

5. *Writ of distringas to be issued from the Court of Chancery according to the form in the first schedule to this act.*—And be it enacted, that in the place and stead of the writ of distringas, as the same has been heretofore issued from the said Court of Exchequer, a writ of distringas in the form set out in the first schedule to this act shall, on and after the said fifteenth day of October one thousand eight hundred and forty-one, be issuable from the Court of Chancery, and shall be sealed at the subpœna office, and that the force and effect of such writ, and the practice under or relating to the same, shall be such as is now in force, in the said Court of Exchequer: Provided nevertheless that such writ, and the practice under or relating to the same, and the fees and allowances in respect thereof, shall be subject to such orders and regulations as may, under the provisions of this act, or of any other act now in force, or under the general authority of the Court of Chancery, be made with reference to the proceedings and practice of the said Court of Chancery.

6. *Certain funds standing in the name of the Accountant General of the Exchequer, transferred to the Queen's Remembrancer.*—And be it enacted, that on the said fifteenth day of October, one thousand eight hundred and forty-one, the sum of one thousand six hun-

dred and fourteen pounds nineteen shillings and sixpence, three *per centum* consolidated bank annuities, now standing in the name of the Accountant General of the said Court of Exchequer, in trust in a cause depending in the same court as a court of revenue, "*The King v. Delamotte*," and the sum of three hundred and thirteen pounds one shilling and nine-pence, like annuities, now standing in the name of the said Accountant General of the said Court of Exchequer, in trust in another cause depending in the said court as a court of revenue, "*The King v. Whitworth*," or so much of the same sums respectively as shall then be standing in the name of the said Accountant General of the said Court of Exchequer, shall become by force of this act vested in the Queen's Remembrancer in the said Court of Exchequer for the time being, in trust to attend the orders of the said Court of Exchequer; and the several sums of cash specified in the second schedule to this act, being cash in the Bank of England to the account of the Accountant General of the said Court of Exchequer, in trust in the causes specified in the same schedule depending in the said Court of Exchequer as a court of revenue, or so much of the same sums respectively as shall then be in the bank to the account of the said Accountant General, shall become by force of this act vested in the Queen's Remembrancer in the said Court of Exchequer for the time being, in trust to attend the orders of the said Court of Exchequer, and the same shall be applicable to all such purposes as the same were respectively applicable to before the passing of this act.

7. *Stocks, &c. standing in the name of the Accountant General of the Court of Exchequer to be transferred into the name of the Accountant General of the Court of Chancery; applicable to such purposes as the same were respectively applicable to. Officers of Bank of England, &c. directed to make the transfer.*—And be it enacted, that on the said fifteenth day of October, one thousand eight hundred and forty-one all stocks, funds, annuities, and securities whatsoever which shall then be standing in the name of the Accountant General of the said Court of Exchequer as such Accountant General in the books of the Bank of England, (except the funds herein-before vested in the said Queen's Remembrancer), or in the books of the South Sea Company, or in the books of the East India Company, or in the books of any other body politic or corporate, or company whatsoever, and all such Exchequer Bills or other securities which at any time before the said fifteenth day of October, one thousand eight hundred and forty-one shall have been transferred into or vested in the name of, or shall be in the custody or power of the Accountant General of the Court of Exchequer as such Accountant General, and all real and personal estate, effects, and property whatsoever (except as aforesaid), which shall at any time before the said fifteenth day of October have been conveyed, assigned, or transferred, or made payable or secured, to the Accountant General of the said Court of Exchequer as

such Accountant General, and which shall not have been applied to the trusts and purposes to which the same were applicable under the order or direction of the said Court of Exchequer, shall on the said fifteenth day of October become by force of this act vested in the Accountant General of the High Court of Chancery for the time being, in trust to attend the orders of the High Court of Chancery, and without any act or deed whatsoever to be done or executed by the Accountant General of the said Court of Exchequer for the time being, and shall and may be proceeded upon by and in the name of the Accountant General of the High Court of Chancery, in right of his office, by any action or suit at law or in equity, or in any other manner, as the same might have been proceeded on by or in the name of the said Accountant General of the Court of Exchequer for the time being, and shall be applicable to all such purposes as the same were respectively applicable to, except where otherwise directed by this act; and all such funds, stocks, annuities, and securities as shall on the said fifteenth day of October be standing in the name of the Accountant General of the said Court of Exchequer, as such Accountant General, in the books of the Bank of England, (except the funds herein-before vested in the said Queen's Remembrancer,) or in the books of the South Sea Company and East India Company, or in the books of any body politic or corporate, or company, and all cash in the Bank in the name of the Accountant General of the said Court of Exchequer as such Accountant General (except the several sums specified in the said second schedule to this act), shall on the said fifteenth day of October be carried, by the proper officers of the said companies respectively, to the credit of the Accountant General of the said Court of Chancery in the books of the said Bank of England, South Sea Company, East India Company, or other body politic or corporate, or company respectively, in trust to attend the orders of the High Court of Chancery; any thing in any act or acts of parliament for the creation or regulation of any such stocks, funds, annuities, or securities, or any other act or acts, to the contrary thereof notwithstanding.

8. *Accountant General of Court of Exchequer to make up accounts with Accountant General of Court of Chancery.*—And be it enacted, that the Accountant General of the said Court of Exchequer shall, on the said fifteenth day of October one thousand eight hundred and forty-one, make up accounts with the Accountant General for the time being of the Court of Chancery, of all stocks, funds, annuities, or securities which shall be standing in the name of the Accountant General of the Court of Exchequer, as such Accountant General, in the books of the Bank of England, (except as aforesaid,) or in the books of the South Sea Company or East India Company, or in the books of any other body politic or corporate, or company; and that the Accountant General of the said Court of Exchequer shall also, on the said fifteenth day of October, make out a

true and perfect schedule of all cash, (except as aforesaid), exchequer bills, bonds, mortgages, orders, and effects whatsoever deposited or remaining in his custody, power, or disposal, or standing in his name as Accountant General, and of all monies which shall have been paid into the said Bank of England to the credit of the Accountant General of the said Court of Exchequer as such Accountant General, and which shall not have been invested in any stocks, funds, annuities, or securities, and shall deliver up to the Accountant General of the Court of Chancery all the books and documents in his possession or power, as such Accountant General of the Court of Exchequer.

9. *Stocks, &c., to be entered causewise, and the cash to become one common cash.*—And be it enacted, that all stocks, funds, and securities, and cash, which by virtue of this act shall become vested in the Accountant General of the said Court of Chancery, shall be entered causewise in the books of such Accountant General, and of the report office of the said Court of Chancery: and that the cash to be transferred to the credit of the said Accountant General of the said Court of Chancery by virtue of this act, and all other cash to the credit of the Accountant General of the same Court of Chancery, shall be and be deemed and taken to be one common and general cash, and as such, shall be issued and payable in such manner as the said Court of Chancery hath directed or shall direct.

10. *Property vested in the Accountant General of the Court of Chancery by this act, to go to his successors in office.*—And be it enacted, that in all cases in which by virtue of this act, any interest in real or personal estate, effects, or property shall be vested in the Accountant General for the time being of the said Court of Chancery, as such Accountant General, and in respect of his office, all such real and personal estate, effects, and property whatsoever, upon the death, resignation, or removal of each and every Accountant General of the said Court of Chancery, from time to time, and as often as the case shall happen, and the appointment of a successor shall take place, shall, subject to the same trusts as the same were respectively subject to, vest in the succeeding Accountant General by force of this act, and without any act or deed whatsoever to be done by the Accountant General resigning or removed, or by the heirs, executors, or administrators of any Accountant General resigning or removed or dying, or by any person or persons claiming under him, them, or any of them, and shall and may be proceeded on in the name of such succeeding Accountant General by any action or suit at law or in equity, or in any other manner, as the same might have been proceeded on by or in the name or names of such Accountant General so resigning, removed, or dying, his heirs, executors or administrators.

11. *Certain funds transferred to the Accountant General of the Court of Chancery to be placed to the account of "monies placed out," &c.*—And be it enacted, that all the funds which on the said fifteenth day of October, one thousand eight hundred and forty-one, shall

be standing in the name of the Accountant General for the time being of the said Court of Exchequer to an account intituled "an account of monies placed out for the benefit and better security of the suitors of the Court of Exchequer," or to an account intituled, "the account of further money placed out for the benefit and better security of the suitors of the Court of Exchequer," shall be transferred by the Governor and Company of the Bank of England into the name of the Accountant General for the time being of the said Court of Chancery, and be placed to the credit of the account now standing in his name, intituled "account of monies placed out for the benefit and better security of the suitors of the High Court of Chancery," and shall be in all respects deemed part of the funds standing to such account, and be applied accordingly.

12. *Certain other funds transferred to the Accountant General of the Court of Chancery, and placed to the "account of securities purchased with surplus interest," &c.*—And be it enacted, that all the funds which on the said fifteenth day of October, one thousand eight hundred and forty-one, shall be standing in the name of the Accountant General of the said Court of Exchequer to an account, intituled, "The redemption fund of the suitors of the Court of Exchequer," shall be transferred by the Governor and Company of the Bank of England into the name of the Accountant General for the time being of the High Court of Chancery, and be placed to the credit of the account now standing in his name, intituled, "account of securities purchased with surplus interest arising from securities carried to an account of monies placed out for the benefit and better security of the suitors of the High Court of Chancery," and shall in all respects be deemed part of such fund, and be applied accordingly.

13. *Money directed by any act, &c., to be paid into the Bank, to the credit of Accountant General of the Court of Exchequer, to become payable to the credit of Accountant General of the Court of Chancery.* *Stocks &c., transferable into the name of the Accountant General of the Court of Exchequer to become transferable into the name of the Accountant General of Court of Chancery.*—And be it enacted, that in every case in which, by virtue of any act or acts of Parliament, or otherwise, any sum or sums of money would, on or after the said fifteenth day of October, one thousand eight hundred and forty-one, be payable by any person or persons, or body politic or corporate, into the Bank of England, in the name or with the privity of the Accountant General of the Court of Exchequer, and which, when paid in accordingly, would be subject to the order of the said Court of Exchequer sitting as a Court of Equity, the same sum and sums shall be payable and paid into the Bank of England, in the name and with the privity of the Accountant General of the Court of Chancery, to be placed to his account to the like credit as the same would have been payable if this act had not passed, but subject to the order of the said Court of Chancery; and t¹

in every case in which any money, funds, annuities, or securities, or other property, would, on or after the said fifteenth day of October one thousand eight hundred and forty-one, be payable or transferrable into the name of, or become vested in the Accountant General of the said Court of Exchequer, and which, when paid or transferred accordingly, would be subject to the order of the same court sitting as a Court of Equity, the same money, funds, annuities, securities, and other property shall be paid, transferrable, and transferred into the name of or vested in the Accountant General of the said Court of Chancery, in trust to attend the order of the said Court of Chancery, and the same shall be applicable to the same purposes as the same would have been applicable if this act had not passed, except where otherwise directed by this act; and that all money, funds, annuities, securities, and property which shall be so paid and transferred into the name of the said Accountant General of the Court of Chancery, and which before the passing of this act, or in case this act had not passed, were paid or transferred, or would have been payable or transferrable to the Accountant General of the Court of Exchequer, by virtue of any act or acts already passed or hereafter to be passed, or other authority whatsoever, shall be held subject to such or the like orders and directions of the said Court of Chancery, and subject to such powers and provisions, as the same would have been subject to in case the same had been originally directed or authorized to have been paid and transferred into the name of the Accountant General of the said Court of Chancery, and had been made originally subject to the orders and directions of the last-mentioned Court; and the orders and directions of the said Court of Chancery relating thereto, shall have the same force and effect as any like orders and directions of the Court of Exchequer, relating thereto would have had if this act had not passed.

14. *Court of Chancery to make orders as to the arranging of balances with the Bank, &c.*—And be it enacted, that it shall be lawful for the Lord Chancellor to make such orders from time to time, as to him shall seem meet, with respect to the time and manner of arranging the balances of the Accountant General of the said Court of Chancery with the Bank of England, and generally for carrying this act into complete effect, so far as the same relates to the business of the office of the said Accountant General and the Report Office, and the transfer of property from the Accountant General of the Court of Exchequer to the Accountant General of the Court of Chancery; anything in any act or acts now in force to the contrary thereof notwithstanding.

15. *Certain offices of the Court of Exchequer abolished.*—And be it enacted, that on the said fifteenth day of October, one thousand eight hundred and forty-one, the offices of Accountant General of the Court of Exchequer, Master on the Equity side of the Court of Exchequer, Clerk to the Masters on the equity side of the

same court, Clerk to the Accountant General, and Clerk of the Reports of the Court of Exchequer, and Clerk Examiner to the Barons of the same Court, shall be abolished.

16. *Proportionate parts of salaries of officers of Court of Exchequer up to 15th October, 1841, to be paid.*—And be it enacted, that out of the funds, which, on the fourteenth day of October, one thousand eight hundred and forty-one, shall be standing in the name of the Accountant General of the said Court of Exchequer to an account, intituled "Account of interest arising from monies placed out for the benefit and better security of the suitors of the Court of Exchequer, in pursuance of an act of the first year of the reign of King George the Fourth," there shall be paid by the Governor and Company of the Bank of England, by virtue of any order or orders of the Court of Exchequer, or of the Lord Chief Baron of the same court, to be made for that purpose, to the several officers on the equity side of the said Court of Exchequer now entitled to salaries payable out of the said funds, such proportionate parts of their respective salaries as shall accrue from the last day of payment thereof to the fifteenth day of October, one thousand eight hundred and forty-one, or so much of the same proportionate parts respectively as the funds which, on the said fourteenth day of October, shall be standing to the account last aforesaid shall be sufficient to satisfy.

17. *Proceedings of Court of Exchequer as a court of equity to be delivered to such persons as the Master of the Rolls, by warrant, shall direct; and deemed records of Court of Chancery, subject to provisions of 1 & 2 Vict. c. 94.*—And be it enacted, that all the bills, answers, decrees, affidavits, and proceedings of the said Court of Exchequer as a court of equity, and under such acts of parliament as aforesaid, (except as aforesaid,) and all decrees and minute-books, and all other books and documents whatsoever, relating exclusively to proceedings in the said Court of Exchequer as a court of equity, and under such acts of parliament as aforesaid, (except as aforesaid,) shall, on the said fifteenth day of October, one thousand eight hundred and forty-one, or as soon after as conveniently may be, be delivered, by the several officers of the said Court of Exchequer now having the custody of the same, to such person or persons as shall be appointed by the Master of the Rolls to receive and take charge of the same, by warrant under his hand, approved of and countersigned by the Lord Chancellor; and that from and after such delivery the same bills, answers, decrees, and other proceedings shall be deemed records of the Court of Chancery in the custody of the Master of the Rolls, subject to the provisions of an act passed in the second year of the reign of her present Majesty, intituled "An act for keeping safely the public records."

18. *Duties of Accountant General and Masters in Revenue Business to be performed by Queen's Remembrancer. Proviso.*—And be it enacted, that all the duties now performed by the Accountant General of the Court of Ex-

chequer, and the Masters on the equity side of the Court of Exchequer, with respect to revenue business depending in the same court otherwise than as a court of equity, shall from time to time, from and after the said fifteenth day of October, one thousand eight hundred and forty-one, be performed by the Queen's Remembrancer for the time being, who shall, with respect to such business, stand and be in the place of the Accountant General of the said Court of Exchequer, and the masters on the equity side of the same court, to all intents and purposes whatsoever; Provided always, that it shall be lawful for the said Court of Exchequer to make such orders from time to time as to the same court shall seem meet, for regulating the duties so to be performed by the Queen's Remembrancer for the time being, especially having regard to the abolition by this act of the office of Clerk of the Reports of the said Court of Exchequer.

19. *Her Majesty empowered to appoint two additional Judges Assistant to the Lord Chancellor, to be respectively called Vice Chancellor.*—And whereas the business of the Court of Chancery has of late years greatly increased, and by reason of the transfer to the Court of Chancery of the equitable jurisdiction of the Court of Exchequer further duties will devolve on the Court of Chancery, and it is therefore expedient, for the better administration of justice in the said Court of Chancery, that two additional judges should be appointed to assist in the discharge of the judicial functions of the Lord Chancellor; be it therefore enacted, that it shall be lawful for her Majesty to nominate and appoint, by letters patent under the Great Seal of the United Kingdom, two fit persons, being or having been respectively barristers-at-law of fifteen years standing at the least, to be additional Judges Assistant to the Lord Chancellor in the discharge of the judicial functions of his office, each of such additional Judges to be called Vice Chancellor.

20. *Power to supply vacancies in office of Vice Chancellor first appointed under this act.*—And be it enacted, that from time to time, when, and as any vacancy shall occur in the office of the Vice Chancellor, who shall be first appointed under the authority of this act, by the death, resignation, or removal from office of such Vice Chancellor, or his successor for the time being, it shall be lawful for her Majesty, by letters patent under the Great Seal of the United Kingdom, to appoint a fit person, being or having been a barrister-at-law of fifteen years standing at the least, to supply such vacancy.

21. *But not to the secondly appointed.*—Provided always, and be it enacted, that nothing herein contained shall authorize the appointment of a successor to the Vice Chancellor secondly appointed under the authority of this act.

22. *Powers of Vice Chancellor. Decrees, &c., to be deemed decrees, &c., of the Court of Chancery. Vice Chancellor not to discharge, &c., orders of any other Vice Chancellor, not being his predecessor in office, or any orders, &c.,*

of the Lord Chancellor, unless authorized by him, &c. 53 G. 3, c. 24.—And be it enacted, that each such Vice Chancellor shall have full power to hear and determine all causes, matters, and things which are or shall be at any time depending in the Court of Chancery in England, either as a court of law or as a court of equity, or incident to any ministerial office of the said court, or which have been or shall be submitted to the jurisdiction of the said court, or of the Lord Chancellor, by the special authority of any act of parliament, as the Lord Chancellor shall from time to time direct; and all decrees, orders, and acts of such Vice Chancellor so made or done shall be deemed and taken to be respectively, as the nature of the case shall require, decrees, orders, and acts of the said Court of Chancery, or of such incident jurisdiction as aforesaid, or under such special authority as aforesaid, and shall have force and validity, and be executed accordingly, subject nevertheless, in every case, to be reversed, discharged, or altered by the Lord Chancellor; and no such decree or order shall be enrolled until the same shall be signed by the Lord Chancellor; Provided always, that no such Vice Chancellor shall have power or authority to discharge, reverse, or alter any decree, order, act, matter, or thing made or done by any other Vice Chancellor to be appointed under this act, not being a predecessor in office of such Vice Chancellor, nor any decree, order, act, matter, or thing made or done by any Lord Chancellor, unless authorized by the Lord Chancellor so to do, nor any power or authority to discharge, reverse, or alter any decree, order, act, matter, or thing made or done by the Master of the Rolls or the Vice Chancellor for the time being appointed in pursuance of an act passed in the fifty-third year of the reign of his Majesty King George the Third, intituled "An act to facilitate the administration of justice," or any order, act, matter, or thing made or done by the Court of Review in Bankruptcy.

23. *Vice Chancellor to sit in absence of Lord Chancellor or in a separate court.*—And be it enacted, that each or either of the Vice Chancellors to be appointed in pursuance of this act shall sit for the Lord Chancellor whenever he shall require him so to do, and shall also, at such other times as the Lord Chancellor shall direct, sit in a separate court, whether the Lord Chancellor or the Master of the Rolls, or the Vice Chancellor appointed in pursuance of the said act, shall be sitting or not, for which purpose the Lord Chancellor shall make such orders as to him shall appear to be proper and convenient, from time to time as occasion shall require.

24. *Vice Chancellor, if a privy councillor, to be a member of the Judicial Committee.*—And be it enacted, that every person holding or who shall have held the office of Vice Chancellor under this act shall, if a member of her Majesty's Privy Council, be a member of the Judicial Committee of the Privy Council.

25. *Rank and precedence next after the Lord Chief Baron of the Exchequer.*—And be it enacted, that the Vice Chancellors to be

appointed in pursuance of this act shall, during the continuance in office of the present Vice Chancellor, respectively have rank and precedence next to the Lord Chief Baron of her Majesty's Court of Exchequer at Westminster; and that the Vice Chancellor to be appointed in pursuance of the said act passed in the fifty-third year of the reign of king George the third, and the Vice Chancellors to be appointed in pursuance of this act, shall after the death of the present Vice Chancellor, or his resignation or removal from his office respectively, have rank and precedence next to the Lord Chief Baron of the Court of Exchequer at Westminster, and, as between themselves, shall have rank and precedence according to seniority of appointment to their respective offices.

26. *Secretary, usher, and trainbearer.*—And be it enacted, that it shall be lawful for her Majesty, in and by such letters patent as aforesaid, or in and by any other letters patent under the Great Seal of the United Kingdom, to direct that each such Vice Chancellor to be appointed in pursuance of this act shall have a secretary, usher, and trainbearer, to be from time to time appointed and removed by such Vice Chancellor at his pleasure; and that the secretaries, registrars, and other officers appointed to attend the Lord Chancellor shall attend each such Vice Chancellor when sitting for the Lord Chancellor, and also when sitting in his separate Court, as circumstances shall require, and as the Lord Chancellor shall order and direct.

27. *Vice Chancellor to hold office during his good behaviour, but may be removed.*—And be it enacted, that each of the Vice Chancellors to be appointed under this act shall hold his office during his good behaviour: Provided always, that it shall be lawful for her Majesty to remove any such Vice Chancellor from his office upon an address of both Houses of Parliament.

28. *Vice Chancellor to take the following oath.*—And be it enacted, that every Vice Chancellor to be appointed in pursuance of this act shall, previous to his executing any of the duties of his office, take the following oath, which the Lord Chancellor or the Master of the Rolls for the time being is hereby respectively authorized and required to administer:

'I do solemnly and sincerely promise and swear, that I will duly and faithfully, and to the best of my skill and power, execute the office of Vice Chancellor. So help me God.'

29. *Lord Chancellor, with the concurrence of the Master of the Rolls and Vice Chancellors, or any two of them, empowered to make orders, &c.*—And be it enacted, that from and after the appointment of the Vice Chancellors under this act it shall be lawful for the Lord Chancellor, with the advice or consent of the Master of the Rolls and Vice Chancellors for the time being, or any two of them, and he is hereby authorized and empowered, to do all such acts, and to make and issue all such rules and orders, as by any act or acts of parliament now in force the Lord Chancellor, with the advice or consent of the Master of the Rolls

and the Vice Chancellor for the time being, or one of them, is empowered to do, make, or issue.

30. *Lord Chancellor and the Master of the Rolls may direct causes, &c. depending before the latter to be heard by the Lord Chancellor or any Vice Chancellor, &c.*—And be it enacted, that it shall be lawful for the Lord Chancellor and the Master of the Rolls from time to time to direct that any causes or matters which shall be at any time or times depending for hearing or determination before the Master of the Rolls for the time being shall be heard and determined by the Lord Chancellor, or by one of the Vice Chancellors for the time being, and to direct that any causes or matters which shall be at any time or times depending for hearing before the Lord Chancellor shall be heard and determined by the Master of the Rolls for the time being; but all decrees and orders to be made by the Master of the Rolls or by any Vice Chancellor in pursuance of such direction shall be subject to be reversed, discharged, or altered by the Lord Chancellor.

31. *Power to Lord Chancellor &c., to reverse &c., orders of the Court of Exchequer.*—And be it enacted, that the Lord Chancellor, the Master of the Rolls, and the Vice Chancellors respectively shall, from and after the said fifteenth day of October one thousand eight hundred and forty-one, have such and the same power to reverse, discharge, or alter decrees or orders of the said Court of Exchequer in suits and matters hereby transferred to the said Court of Chancery as they would have had if the same decrees or orders had been made by them respectively, or by their respective predecessors in office, in suits or matters depending in the said Court of Chancery: provided always, that any decree or order of the Master of the Rolls, or one of the Vice Chancellors, reversing, discharging, or altering any decree or order of the said Court of Exchequer, shall be subject to be reversed, discharged, or varied by the Lord Chancellor.

[To be continued.]

NEW ORDER IN CHANCERY ON THE ABOLITION OF THE EXCHEQUER.

"GENERAL ORDER.

"Tuesday, Oct. 12. 1841.

"Whereas an act was passed in the fifth year of the reign of her present Majesty, intituled 'An act to make further Provisions for the Administration of Justice:—

"Now, for giving effect to certain provisions in the said act for transferring to this Court all suits and matters which, on the 15th day of October instant shall be depending in her Majesty's Court of Exchequer as a Court of Equity, or under the special authority of any act or acts of Parliament, I do hereby order, that every

plaintiff and defendant in any suit to be transferred under the authority of the above-recited act, shall, on or before the said 15th day of October instant, name one of the sworn clerks of this Court, to conduct and carry on, and act in such suit, as clerk in court, according to the usual practice of this Court: and in default thereof, either party to the suit may cause to be served upon the other, a notice in writing, requiring the party served to appoint a clerk in court within seven days after the day of service of such notice, which shall be left at the dwelling-house or usual place of abode of such party; but if such dwelling-house or usual place of abode cannot be ascertained, and affidavit shall be made to that effect, then service of such notice upon the solicitor who was last concerned for such party in the Court of Exchequer shall be deemed good service; and in case, at the expiration of the period so to be mentioned in such notice, no clerk in court shall have been appointed, according to the requisition thereof, then the party giving such notice shall be at liberty to apply to this Court to appoint a clerk in court for the party so making default as aforesaid, and such application may be upon motion or petition without notice; but it shall be supported by an affidavit of such notice as aforesaid having been served, and of the address of the party or solicitor served. And I do hereby further order, that no proceeding shall be taken by any party in any suit so to be transferred as aforesaid until after the appointment of a clerk in court; and that where such appointment shall be made by this court, the order directing the same shall contain the address of the party so making default in such appointment, or of the solicitor so representing such party as aforesaid, in order that the clerk in court so appointed may be enabled to forward notices and other matters to such party. And I do hereby further order, that so far as regards the taxation and allowance of costs in any of the suits or matters so to be transferred as aforesaid, and which shall not by any order of this court be directed to be regulated in that particular by the present practice of the Court of Exchequer, such costs shall be taxed and allowed in manner following; that is to say, the costs previously to the said 15th day of October instant shall be taxed and allowed according to the practice of the said Court of Exchequer, and the costs from and inclusive of the said 15th day of October shall be taxed and allowed according to the practice of this court.

“LYNDHURST, Chancellor.”

AMENDMENT OF THE LAW OF ATTORNEYS.

TAKING ARTICLED CLERKS.

Sir,

In the proposed consolidation and amendment of the law of attorneys, one very startling and uncalled for provision is inserted; viz. “that no attorney or solicitor shall be capable of taking a clerk to be bound by such contract (as therein mentioned) unless such attorney &c., shall have been admitted, and shall have practised as an attorney or solicitor for *five* years previously to the date and execution of such contract.”

Now, Sir, I take the liberty of asking for the *reason* of such an enactment, for if a satisfactory one cannot be assigned, surely it is not a law in accordance with the established maxim, “that the law is the perfection of reason.” It is, to say the least of it, an extremely harsh and arbitrary clause, and from which, as far as I can judge, no real benefit to the profession is to be gained. It is but just and fair that in these days when there is such a mania for trimming and pruning, that those who have the framing of like laws, should exercise due consideration for the rising members of the profession, who are honorably striving to maintain their respectability. There is a great outcry about maintaining the dignity of the profession by honorable practice, which I by no means condemn; but I ask, how is this to be accomplished, if our sources are thus, one after another, attacked? surely every man is worthy of his hire, in whatever grade of life he may be, and if you will not reward him honorably, he is obliged of necessity to resort to less scrupulous means.

SPRS.

[We presume that the “reason” in favor of the alteration is that, until an attorney has been in practice some years, he does not generally possess business sufficient to afford an opportunity to the clerk of acquiring by actual experience a due knowledge of his profession. A regulation much more stringent than the one proposed, prevails amongst the prosecutors.—ED.]

RE-ADMISSIONS.

There appears one very important omission in this act, which, as yet, does not seem to have been noticed. It is a well-known fact, that if an attorney neglect to take out his certificate for more than a year after his admission, there are serious doubts whether a re-admission is not necessary, and the cases on the subject seem very unsatisfactory. Now, as many of the attorneys who are annually admitted, have no intention of entering immediately into practice on their own account, the law, as it at present stands—rendering a re-admission necessary if a certificate be not taken out within a year from the first admission—is extremely

inconvenient, and it might easily be altered by a short enactment introduced into the statute in question, declaring that an attorney by neglecting to take out his certificate for a year after his admission, should not be thereby placed under the necessity of being a second time admitted before he could enter into practice.

AN ATTORNEY.

[It will be observed by the bill referred to, that it is intended to *repeal* the clause in the Stamp Act, 37 G. 3, c. 90, enacting that every person admitted in any of the Courts therein mentioned or referred to, who shall neglect for one whole year to obtain the certificate therein mentioned, shall be incapable of practising, and directing that the admission of such person in any of the Courts shall be null and void. The evil complained of will therefore be at an end. See p. 425, *ante*.—Ed.]

SUPERIOR COURTS.

Vice Chancellor's Court.

PURCHASE BY A SOLICITOR.—PRACTICE.— PROOF OF WILL.

Where a purchase is made by a solicitor of property belonging to his deceased client, the Court will direct an inquiry into the circumstances under which such purchase was made, if it should appear that his fiduciary character continued up to the time of the purchase, although the property in question may have been purchased by him at public auction, and many years may have elapsed since the completion of the purchase.

If a will under the old law, which was intended to pass real estate, appears to have been executed in the presence of three witnesses, and the attestation of one witness is proved, and it is also proved that inquiries have been made after the other witnesses, but that they cannot be found, the Court will direct a reference to the Master to inquire whether the will was duly proved.

The bill in this case was filed by the devisees named in the will of a person named Thompson, for the purpose of setting aside certain conveyances of parts of the testator's property which had been made to the defendant many years ago, on the ground of fraud and improper conduct. From the allegation in the bill it appeared that the testator was a man of very intemperate habits, and had become so enfeebled in body and mind as to be incapable for several years prior to his decease of conducting any business requiring thought or judgment, and the plaintiffs charged that certain accounts had been improperly made out against him by the defendant, who acted as his solicitor; that in the settlement of the purchase which had been made by the defendant

after the testator's death of parts of his property, the defendant had claimed and been allowed credit for balances which could not be substantiated; and that such purchase ought to be set aside, and an account taken of all dealings and transactions between the testator and the defendant.

K. Bruce and Thompson, for the plaintiffs, said it was clear from the evidence adduced on their behalf, that, exclusive of the weakening effects produced by the habits of intemperance described by the witnesses, the testator had been subject to apoplectic fits, which must have greatly impaired his mental faculties; but even if the circumstances shewing his incompetency to attend to any matters of business had not been so convincing, the defendant, standing in the relation in which he did to the testator as his solicitor and responsible adviser, could not uphold such a purchase as that now questioned.

Richards and Lewis, for the defendant, urged, in the first place, that the evidence respecting the testator's incompetency was too general to be relied on; and, secondly, that as the transaction was *bond fide*, there was no good reason for its being impeached, after a lapse of so many years, simply because the defendant happened to have been the solicitor of the testator. In *Lord Selwry v. Rhodes*, 2 Sim. & Stu. 41, it was clearly admitted that an agent may contract with his principal for the purchase of his employer's property, if he fairly imparts to the employer all the knowledge which he himself possesses respecting such property, and no case had been made out against the defendant of his being in possession of superior information to that of the trustees, of whom he purchased, in consequence of his having been solicitor to the testator. The property also had been submitted to public competition, and the defendant became the purchaser at an auction.

The Vice Chancellor said that there was sufficient evidence to induce the Court to direct an inquiry. It was clear that the defendant had for some time acted as the legal adviser of Thompson, and he also interfered in the arrangement of his affairs after his death, so that his fiduciary character continued up to the time of the sale. He should, therefore, refer it to the Master to inquire as to the dealings and transactions between the defendant and the testator, and also as to the purchase made by the defendant after the testator's death, and whether any, and if any, what accounts had been stated and settled between the testator and the defendant, and under what circumstances, with liberty to the Master to state special circumstances. Further directions and costs reserved.

[An objection having been made to the plaintiff's right to a decree in consequence of the will not being proved, his Honour said that as one of the witnesses on behalf of the plaintiff proved the hand-writing of one of the witnesses to the will, and it was also proved that inquiry had been made after the others, who could not be found, there were sufficient

grounds for a direction to the Master to inquire whether the will was duly proved, which should form part of the order.]

Thompson v. Day, June 29th and 30th, 1841.

PRACTICE.—INFANTS.—NEXT FRIEND.

The want of a next friend for an infant plaintiff is not a sufficient objection to prevent the continuance of proceedings in a suit, provided the defendant is willing that they should be continued, and there is an adult plaintiff who is equally interested with the infant.

In this case a decree had been made for taking the usual accounts of a testator's estate and for an enquiry as to his next of kin. The plaintiffs were the two nephews of the testator, and it being supposed they were both of age the bill was filed in their names, without the addition of a next friend. It appeared, however, by the Master's report, that one of the plaintiffs would not be of age for about nine months, and the cause now coming on for further directions,

Randall, for the defendant, the executrix, stated that although his client did not wish to offer any opposition to the order being made, still he was doubtful whether she might not be called on to account over again, and he, therefore, deemed it his duty to submit to the Court whether any order could be made as the suit was at present constituted, but

The *Vice Chancellor*, after consulting with the registrar, said, that as the other plaintiff was adult and equally interested with the infant, he did not consider the objection of sufficient importance to stop the progress of the suit.

McEnerney v. Penn, August 6th, 1841.

Queen's Bench Practice Court.

**ATTORNEY OFF THE ROLL, SUING BY AGENT.—
REFUNDING COSTS.**

An attorney being off the roll, having omitted to take out his certificate, employed an agent in town to sue out a writ of summons. The action being settled, costs in the suit were paid to the agent, under a judge's order made by consent: Held, that under such circumstances, neither the attorney nor the agent could be compelled to refund those costs.

This was an application made on behalf of the defendants in the action, who sought to procure a sum of 4l. 4s. 10d., which they had paid as costs of suit to the agent of the attorney of the plaintiff, to be refunded. The writ of summons was indorsed as having been issued by Charles Lever, as agent for one Heslop, of Haverfordwest. The action was settled, and the sum of 4l. 4s. 10d. was paid to Lever, the agent, pursuant to a judge's order, which was made by consent of both parties. It was now discovered that Mr. Heslop had not taken out his certificate since the year 1838.

The application was resisted on the part of Mr. Heslop, and Mr. Lever; and it was contended that the payment had been voluntarily made, pursuant to a consent given before a judge. The case was unlike that of proceedings being taken by an attorney, who was off the roll, for costs. *Read v. Bloom*, 3 Bing. 9; 10 Moore, 261, S. C. But furthermore the payment had been made, not to an uncertificated attorney, but to his agent, who was properly qualified to practise. *Goodaer v. Coner*, 3 Dowl. P. C. 424; *Jervis v. Deures*, 4 D. P. C. 764; *Jones v. Jones*, 5 D. P. C. 474.

In support of the rule it was urged, that the cases cited referred to the 2 Geo. 2, c. 23; but that the present application was founded upon the 37 Geo. 3, c. 90, s. 30, by which it was provided that if any person shall, in his own name, or in the name of any other person, sue out any writ or process, &c., or shall act in Court as an attorney, without having first obtained and entered his certificate as directed, &c., he shall forfeit 50l., and be incapable of maintaining any action for fees for prosecuting or defending suits, &c., without such certificate as aforesaid. It was quite clear that, according to the statute, Mr. Heslop was incapable of recovering his costs by action, and the facts of their having been already paid, and of their having been received by an agent who was a certificated attorney, made no difference in the case. *Slack, qui tam, v. Wilkins*, 2 Cr. & M. 23; *Patterson v. Powell*, 9 Bing. 620; *Wilton v. Chambers*, 2 N. & P. 392; S. C. 7 Ad. & El. 524, was strongly in point. There the Court of Queen's Bench ordered certain securities which had been obtained by an attorney who was not regularly on the roll, from his client for business done as an attorney, to be given up; and Lord Denman said, "We think that whatever is obtained through the medium of an illegal practice, is itself illegal." The costs in the present case must be taken to have been paid to Heslop himself, and as he was off the roll, they must be taken to have been obtained by illegal practice within the meaning of the case cited, and they ought, therefore, to be refunded. *Cur. adv. vult.*

Wightman, J.—I have considered this case, and I think the rule must be discharged, as no case has gone so far as to determine that costs which have been actually paid to an attorney who is off the roll can be recovered by action. The case of *Wilton v. Chambers* has gone the farthest; but that only decides that an attorney, under such circumstances as there existed, could not avail himself of a security given for work done while he was off the roll. It is unnecessary to consider the case in any other light, as no case has gone the length of saying that costs actually paid can be recovered back.

T. Hill in support of the motion: *Addison, contra.*

Rule discharged without costs.—*Nash v. Goode and Parry*, T. T. 1141. Q. B. P. C.

EJECTMENT.—RULE OF COURT FOR DELIVERING UP PREMISES.—ATTACHMENT.—PARTIES TO SUIT.

A rule of Court had been obtained in an action of ejectment requiring certain premises to be given up, without mentioning by whom. The tenant in possession being no party to the suit: Held, that he was guilty of no contempt in refusing to give up possession, and that an attachment, therefore, could not issue against him: Held also, that as he was a stranger to the suit, a rule could not be granted requiring him to give up possession.

This was an action of ejectment, in which a Judge's order, which had been made a rule of Court had been granted, requiring the delivery up of possession of the premises in dispute. The tenant in possession, named Lovell, was no party to the suit, and his name was not mentioned in the rule, which was in general terms, and did not specify any person as the one by whom possession was to be given up. Possession had been demanded of Lovell, but he had refused to obey the rule; whereupon

Butt, on behalf of the defendant, moved for an attachment.

Peterdorff shewed cause. Lovell was a stranger to the suit, and could not be said to be in contempt for disobedience to an order with which he had nothing to do.

Wightman, J.—The order is made in a cause to which Lovell is no party, and no attachment can be granted against him. Fresh proceedings may be instituted, but this rule must be discharged without costs.

Butt subsequently moved for a rule, calling upon Lovell to shew cause why he should not give up possession of the premises. He made no claim of title to them, and there was nothing to shew that he had any object in resisting the application.

Sed, per Wightman, J.—He is no party to the suit, and no such order can be effective as against him, however Lewis may be charged by it. I cannot grant this rule.

Rule refused.—*Doe, d. Lewis v. Ellis, T. T. 1841. Q. B. P. C.*

WARRANT OF ATTORNEY.—APPROPRIATION.—BANKRUPT.—ASSIGNEES.—DEFEAZANCE.—1 & 2 VIC. c. 110, s. 8.

Where a party gives a warrant of attorney which is void, and which is therefore liable to be set aside, and afterwards becomes bankrupt, it is competent for the assignees to apply for the purpose of setting aside the warrant.

In this case, the defendant, a trader, had given a warrant of attorney, to secure the repayment of certain specific advances of money made by the plaintiff. It was so stated in the defeazance. The defendant afterwards became bankrupt. Before the act of bankruptcy was committed, the plaintiff signed judgment on the warrant of attorney, and levied on the goods of the defendant, pursuant to the judgment. An application was made to set aside

this execution and the warrant of attorney, on the ground that it had been satisfied so far as the advances specifically made, and that the plaintiff had sought to enforce it in respect of sums subsequently advanced, and which was not contemplated by the warrant at the time of its execution. The rule was obtained by the assignees.

Cowling appeared to shew cause against this rule, and contended that the assignees had no *locus standi* in Court. They could have no greater right than the bankrupt had, and it was quite certain the bankrupt himself could not succeed in such an application.

Martin, in support of the rule, contended that the assignees had such a right, as they were entitled to all the estate of the bankrupt. The warrant being given for a specific advance, it could only be rendered available in respect of such advance, and not in respect of subsequent advances.

Cur. adv. vult.

Coleridge, J.—This was a rule moved at the instance of the assignees of the defendant, a bankrupt, for the purpose of setting aside the judgment signed on a warrant of attorney given by the bankrupt. The ground for the motion was, that the debt secured by the warrant had been satisfied before the signing of the judgment. This was denied by the plaintiff, and he farther insisted, that at all events the assignees could not, under the circumstances, make the application. This latter point appears to me to present no difficulty. *Taylor v. Nichols*,^a and *Chipp v. Harris*,^b which were cited in support of the objection, have really no bearing on it. In the first, Mr. Baron *Parke* only said that the bankrupt himself might make the motion; in the latter, the person moving was treated merely as a third party, having no interest; and the case was decided on another objection. It cannot be doubted that the assignees of a bankrupt, whose goods have been seized under an execution alleged to be fraudulent, have a sufficient interest on behalf of creditors generally to apply for the Court's interference to set it aside. In *Harrod v. Benton*,^c the Court held that a single judgment creditor might apply, and that involves the present point so far as it turns upon the question of interest. It was said that the assignees could not interfere in this case, because the bankrupt himself could not have sued for the proceeds of the execution, without being met by a plea of set-off. It must not be taken as universally true, that the remedies of the bankrupt, and of his assignees, are exactly co-extensive; many familiar cases will occur to every one, where, the transaction being in effect a fraud on the general body of creditors, the assignees are not bound, although the bankrupt might be; but this is not a case in which the test suggested at all applies. Here there is no waiver of the alleged wrong; no affirmation of the act done; nothing which lets in the consideration

^a 6 M. & W. 92.

^c 8 B. & C. 217.

^b 5 M. & W. 430.

of mutual credit or set-off; but the assignees allege that the plaintiff has wrongfully availed himself of a satisfied security to give himself a preference over a general body of creditors, in respect of a debt which ought to have been proved and paid rateably only under the fiat. I cannot doubt that if the facts clearly make out that allegation, the Court ought to give them the relief they pray for.

This, therefore, brings me to the substantial question, as to which the dates and a few facts are material. The plaintiff was the holder of shares in a joint-stock bank, and on the 30th June had a balance there of nearly 300*l*. On that day, he agreed to lend the defendant 300*l*., for which he was to have the security of defendant's acceptance at three months, and a warrant of attorney. On that day, accordingly, the bill was drawn, and plaintiff gave defendant a cheque on the bank for 300*l*. This, however, was not presented, and instead of the money being procured in that way, the plaintiff, on the 1st July, indorsed and discounted the bill at the bank, and handed over the proceeds, *minus* the discount, to the defendant. The warrant of attorney was to be prepared at the defendant's expense, and the plaintiff entrusted him with its preparation. The plaintiff swears that it was understood that it was to be a security for money advanced from time to time: the defendant makes no affidavit; but in point of fact the warrant of attorney, which was not given till the 25th of September, 1840, is expressly limited to secure the sum of 300*l*. lent on the 30th June, with interest. The defeazance is very short and simple: the plaintiff had a full opportunity of objecting, if it was made in any other form than had been agreed on, which he never did; but, on receiving it, took the necessary step, by filing, to make it a valid security. On the 2d October, the day before the maturity of the outstanding bill, the plaintiff advanced to the defendant 100*l*., which, with 200*l*. of his own money, the defendant paid into the bank on that day, for the purpose of retiring the bill. On the 15th October, the plaintiff lent the defendant 200*l*. more. On the 20th January, the plaintiff signed judgment on the warrant of attorney, and levied execution on the 20th February; but in the interval he had executed a composition deed, under which he agreed absolutely to accept payment of 8*s*. in the pound in satisfaction of all monies due to him from the defendant, the payment to be made by instalments, none of which would fall due before the date of the execution, or of the fiat, and which deed contained no proviso that it should be void in case the other creditors did not come in. The fiat issued on the 30th March.

It is contended on the part of the assignees, first, that the 300*l*. lent on the 30th June was satisfied by the discount of the defendant's acceptance on the 1st July. No loan was in fact made until the bill had been discounted, and although that bill was accepted by the defendant, yet the substance of the transaction undoubtedly was that the plaintiff should pro-

cure the money by discounting at his own bankers, and where his own credit must have been mainly looked to, the bill on which both he and the defendant would be liable, and having procured it, should lend it to the defendant. The assignees next contended that the loan, at all events, was paid by retiring the bill at maturity by the defendant; and so far as that was done without advance by the plaintiff, I think they contend rightly. If the defendant, with his own money, or with money procured elsewhere than from the plaintiff, had taken up the bill, the whole transaction of the 30th June would have been closed, and if the warrant of attorney was limited to secure the plaintiff as to that transaction, the defendant might immediately have insisted on the instrument being given up to be cancelled. On the other hand, if the plaintiff had taken up the bill, or what would have been the same, supplied the defendant with the money for the purpose, it never could have been said that the advance of the 300*l*. on the 1st July had been repaid. Unless, therefore, the conclusion to be drawn from what appears on the face of the defeazance can be varied by the understanding sworn to by the plaintiff, this rule ought to be made absolute to the extent of paying over to the assignees the whole of the proceeds of the levy, beyond the sum of 100*l*. advanced by the plaintiff on the 2d October; for a person having the security of a judgment for a satisfied debt, cannot, as against third persons, avail himself of it for the purpose of protecting another unsecured demand. To the extent of 100*l*., the execution, however, would be proper, because the plaintiff having contributed that towards the retiring the bill, the 300*l*. was to that extent unpaid. And I think it would be full of danger to allow the operation of the warrant of attorney to be extended beyond the plain and specific terms of the defeazance. The deed of composition appears to me to stand upon a different footing; the precise language of the instrument has not been brought before me; but I may presume that no change in it provides for the vacating of the warrant of attorney, and as that remained in force, and the assignees must insist that the deed itself has become entirely inoperative for all the purposes contemplated by it by the force of the fiat, they cannot be assisted in attempting to set it up merely for the purpose of preventing the plaintiff from acting on the warrant of attorney.

The sheriff was served with this rule, and looking at its language, I think he was justified in appearing; he ought, therefore, to have his costs of shewing cause out of the fund, as well as his poundage and expenses on the levy to the extent of 100*l*.

The rule will be absolute in part, as I have stated above, but under the circumstances, without costs, as between the plaintiff and the assignees.

Rule absolute.—*Bell v. Tidd*, T. T. 1841. Q. B. P. C.

CHANCERY SITTINGS.

In and after Michaelmas Term, 1841.

Before the Lord Chancellor.

AT WESTMINSTER.

Tuesday .. Nov. 2	Appeal Motions.
Wednesday 3	Petitions.
Thursday 4	Cause, <i>Tulloch v. Hartley</i>
Friday 5	and
Saturday 6	Appeals and Causes.
Monday 8	
Tuesday 9	
Wednesday 10	
Thursday 11	Appeal Motions and Do.
Friday 12	
Saturday 13	
Monday 15	Appeals and Causes.
Tuesday 16	
Wednesday 17	
Thursday 18	Appeal Motions and Do.
Friday 19	
Saturday 20	
Monday 22	Appeals and Causes.
Tuesday 23	
Wednesday 24	
Thursday... .. 25	Appeal Motions and Do.

Before the Vice Chancellor.

AT WESTMINSTER.

Tuesday .. Nov. 2	Motions.
Wednesday 3	Petition Day.
Thursday 4	Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Friday 5	Unopposed Petitions, Short Causes, and Ditto.
Saturday 6	Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Monday 8	
Tuesday 9	
Wednesday 10	
Thursday 11	Motions.
Friday 12	Unopposed Petitions and Short Causes previous to general Paper.
Saturday 13	Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Monday 15	
Tuesday 16	
Wednesday 17	
Thursday 18	Motions.
Friday 19	Unopposed Petitions and Short Causes previous to General Paper.
Saturday 20	Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Monday 22	
Tuesday 23	
Wednesday 24	
Thursday 25	Motions.

COMMON LAW SITTINGS,

In and after Michaelmas Term, 1841.

Auren's Bench.

In Term.

MIDDLESEX.	LONDON.
Wednesday... Nov. 3	
Saturday 6	
Tuesday 23	Wednesday 24
Friday 26	After Term.
	Saturday 27
	(To adjourn only).

The Court will Sit at Eleven o'Clock in Term, in Middlesex; at Twelve in London; and in both at Half-past Nine after Term.

Long Causes will be postponed from the 3d and 6th of November to the 26th; and all other Causes on the Lists for the 3d and 6th of November, will be taken from day to day until they are tried.

Undefended Causes only will be taken on the 23d of November.

Short Defended as well as Undefended Causes entered for the Sitting on the 24th of November, will be tried on that day, if the plaintiffs wish it, unless there be a satisfactory affidavit of merits.

Causes standing over with Judgment of the Term in Middlesex, will be taken on the 26th of November.

Common Pleas.

In Term.

MIDDLESEX.	LONDON.
Wednesday .. Nov. 10	Friday Nov. 12
Tuesday 16	Friday 19
Friday Nov. 26	After Term.
	Saturday Nov. 27

The Court will sit at ten o'clock in the forenoon on each of the days in Term, and at half-past nine precisely on each of the days after Term.

The Causes in the List for each of the above sitting days in Term, if not disposed of on those days, will be tried by adjournment on the days following each of such sitting days.

On Saturday the 27th November, in London, no Causes will be tried, but the Court will adjourn to a future day.

THE EDITOR'S LETTER BOX.

We do not observe that A. P. has added any thing new to his former letter in support of the Annual Certificate Duty, or impugned the facts stated by his opponents.

The letters of "An Attorney;" U.; P. A.; "A Constant Reader;" and "A Subscriber;" have been received.

A correspondent at Chesterfield is informed that it will probably be late in the next session before the Bill for consolidating the Law of Attorneys can pass. The clause he refers to seems a proper one.

The objection of a correspondent shall be considered, but he should allow for diversity of taste, and we should like to be satisfied that he is really a friend to the work.

The Legal Observer.

SATURDAY, OCTOBER 23, 1841.

— "Quod magis ad nos
Pertinet, et nescire malum est, agitamus.

HORAT.

SETTLEMENTS IN DEROGATION OF MARITAL RIGHTS.

AFTER a treaty of marriage has been commenced, the intended wife cannot make any disposition for her own benefit of her property, whether real or personal, without the consent of the husband, which will be binding on him; and the making the settlement at this time will be in itself indicative of fraud,^a although other circumstances evidencing fraud are generally shewn, as a declaration by the intended wife that the husband shall enjoy the property.^b But if the settlement be made before the commencement of the treaty of marriage, if it be made for a meritorious object, as to provide for the wife's children by a former marriage, although it is not mentioned to the husband, it will be good against him.^c So also the payment of a debt, or the dealing with a trifling part of her property by the intended wife, although on the eve of marriage, as the giving a bond, even with a direction to conceal it,^d or the release of a small legacy,^e will not be fraudulent.

If the settlement be made by the wife for her separate use, in contemplation of a marriage which never takes place, and she then marry another husband, the settlement will not be void, as it was not intended to deceive him.^f But if it be intended to

deceive her intended husband, the greater or less interval between the date of the instrument will not alter the principle of its invalidity.^g If a woman, having a settlement made on her to her separate use by her first husband, conceal this fact from her second husband on the treaty for the marriage, the settlement, it has been held, will be void as against him:^h and it is quite clear that if a woman immediately before her marriage, without the knowledge of her intended husband, agree to pay a sum of money to a person to whom she does not owe it, such an agreement will be fraudulent as respects the intended husband.ⁱ

It is usual to make the husband party to any deed of settlement made on marriage, to shew his consent thereto; but this is not strictly necessary, as his concurrence and notice of the deed may be proved in any other way.^j

It has been thought that a settlement made in favour of children by a former marriage, would, in all cases, be good, although concealed from the husband.^k But the reverse has been laid down in a recent case.^m Speaking of a settlement of this nature, Lord Langdale, M. R., said, "In the execution of this settlement, so far as it made provision for her children, she was performing a moral duty. In the circumstances in which she was placed, it was clearly her duty, before she placed herself and her property in the power of her second husband, to secure a provision for her children by her first husband, from whom her property was derived; but in perform-

^a *Howard v. Hooker*, 2 Cha. Rep. 81; 1 Eq. Cas. Ab. 59; *Countess of Strathmore v. Bowes*, 2 Cox. 28; 1 Ves. jun. 28; 2 B. C. C. 345; 6 B. P. C. 427; *Bail v. Montgomery*, 2 Ves. jun. 194.

^b *Carlton v. Earl of Dorset*, 2 Vern. 17; 2 Cox. 33; *Draper's case*, Freem. 29; *King v. Cotton*, 2 P. Wms. 359, 674.

^c *King v. Cotton*, ubi. sup.; *Countess of Strathmore v. Bowes*, ubi. sup.; *contra*, *Poulson v. Wellington*, 2 P. Wms. 533.

^d *Blanchet v. Foster*, 2 Ves. sen. 264.

^e *Thomas v. Williams*, More, 177.

^f *Lady Strathmore v. Bowes*, ubi. sup.; but see 1 Russ. 495. And see what Lord Langdale says of this case, 2 Beav. 531.

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^g *Goddard v. Snow*, 1 Russ. 485.

^h *Edwards v. Dennington*, cit. 2 Vern. 17; and see 1 Ves. jun. 26.

ⁱ *Lance v. Norman*, 2 Chan. Rep. 79; *King v. Cotton*, 2 P. Wms. 360.

^k *Draper's case*, 2 Freem. 29; *Blithe's case*, ib. 97.

^l *Blithe's case*, Freem. 92; *Hunt v. Mathews*, 1 Vern. 408; and see *King v. Cotton*, 2 P. Wms. 358, 674.

^m *England v. Downs*, 2 Beav. 528.

ng a duty towards her children, she had no right to act fraudulently towards her second husband."

Lord *Langdale* also held, in the same case, that mere concealment is sufficient, under certain circumstances, to avoid a settlement of this nature. "The equity which arises in cases of this nature, depends upon the peculiar circumstances of each case, as bearing upon the question, whether the facts proved do or do not amount to sufficient evidence of fraud practised on the husband. It is not doubted that proof of direct misrepresentations, or of wilful concealment with intent to deceive the husband, would entitle him to relief; but it is said that mere concealment is not, in such a case, any evidence of fraud, and that if a man, without making any inquiry as to a woman's affairs and property, thinks fit to marry her, he must take her and her property as he finds them, and has no right to complain, if, in the absence of any care on his part, she has taken care of herself and her children, without his knowledge. This proposition, however, cannot be admitted as stated; and clearly a woman, in such circumstances, can only reconcile all her moral duties by making a proper settlement on herself and her children, with the knowledge of her intended husband. If both the property and the mode of its conveyance, pending the marriage treaty, were concealed from the intended husband, as was the case in *Goddard v. Snow*, there is still a fraud practised on the husband. The non-acquisition of property, of which he had no notice, is no disappointment, but still his legal right to property actually existing is defeated, and the vesting and continuance of a separate power in his wife over property which ought to have been his, and which is without his consent, made independent of his controul, is a surprise upon him, and might, if previously known, have induced him to abstain from the marriage. Nevertheless, cases have occurred in which concealment, or rather the non-existence of communication to the husband, has not been held fraudulent; and whether fraud is made out, must depend on the circumstances of each case,—as an unmarried woman has a right to dispose of her property as she pleases, and as a conveyance made immediately before her marriage is *primâ facie* good, it is to be impeached only by the proof of fraud."

But where the husband, after the marriage, having a knowledge of the settlement, takes no step to set it aside, but acts under it, it will not afterwards be disturbed, as in case to which we have just alluded.

"Mrs. Broad died on the 14th of March, 1833, and this bill was filed on the 29th of January, 1836. The defendant, Mr. Broad, notwithstanding his present allegation of fraud, has never filed any bill to be relieved from the settlement as fraudulent, and on the whole case, considering that there is no sufficient proof that a treaty of marriage was subsisting between the defendant, Mr. Broad and Mrs. Mason, at the time when the settlement was executed:—that there is no sufficient proof of concealment up to the time of the marriage:—that if Mr. Broad did not know of the settlement before or at the time of the marriage, he certainly did know of it not long afterwards, and permitted his wife to act against his interest in execution of the power given to her by the settlement; and never has attempted, and does not now attempt, to set it aside. I think, that upon this bill, and upon the evidence before me, I am bound to give the plaintiff the relief which he seeks." And the settlement was accordingly supported.

THE NEW VICE CHANCELLOR.

MR. WIGRAM has been appointed a Vice Chancellor under the recent act, and perhaps it is the present intention not to fill up the other judgeship. We have already stated that the pressure of business in the Court of Chancery has not increased of late: this may be ascribed to several causes, and perhaps it is as well to wait a little before two judges are appointed. The choice is also a good one. We shall have an industrious, painstaking, and acute judge in Mr. Wigram, and we are also the better pleased at the appointment, because it is well known he is friendly, and will lend a helping hand towards carrying on the great work of Chancery Reform, of which no one knows better than himself, that his appointment is only the first step. To the state of that question we shall shortly advert.

THE LAW OF FINDING.

If a carrier opens a bale or pack of goods, or pierces a vessel of wine, and takes away part thereof, this is a larceny, 3 Inst. 107. If a pocket-book containing bank-notes was left in the pocket of a coat sent to be mended, and the tailor took the pocket-book out of the pocket, and the notes out of the pocket-book, this is felony. Per Lord *Eldon*, 8 Ves. 405. So on the same authority, if the pocket-book was left in a hackney-coach, if ten people were in the coach in the course of the day, and the

coachman did not know to which of them it belonged, he acquires it by finding certainly, but not being entrusted with it for the purpose of opening it, that is a felony. See *Wynne's case*, Lynch, C. C. 413. The old rule as to finding was, that if one lose his goods and another find them, though he convert them *animo furandi* to his own use, it is no larceny." 3 Inst. 108. But this "has undergone," said Parke, B., in *Merry v. Green*, 7 Mee. & W. 631, "in more recent times, some limitations: one is, that if the finder knows who the owner of the lost chattel is, or if from any mark upon it, or the circumstances of the owner could be reasonably ascertained, then the fraudulent conversion *animo furandi* constitutes a larceny." Russell on Crimes, 102. These rules have recently been applied to a case, the circumstances of which were as follows:—Messrs. Mammatt and Tunncliffe, who had for some time resided together at Ashby-de-la-Zouch, in the same house, and keeping the same table and servants, in October, 1839, broke up their establishment, and sold their furniture (which was partly joint, and partly separate property) by public auction. At that sale, the plaintiff, who was a shoemaker, also residing in Ashby, became the purchaser, at the sum of 14 6s. of an old secretary or bureau, the separate property of Mr. Tunncliffe. The plaintiff kept the bureau in his house, and on the 18th of November following, he sent for a boy of the name of Garland, a carpenter's apprentice, to do some repairs to the bureau. Whilst Garland was so engaged, he remarked to the plaintiff that he thought there were some secret drawers in the bureau, and touching a spring, he pulled out a drawer which contained a quantity of writings. The plaintiff then discovered another drawer, in which was a purse containing several sovereigns and other coins, and under the purse a quantity of bank-notes. The contents of the bureau are set forth in the plea. Of this property the plaintiff took possession, and telling Garland that the notes were bad, he opened the purse and gave him one of the sovereigns, at the same time charging him to keep the matter secret. Garland being interrogated by his parents how he came by the possession of the sovereign, the transaction transpired, and it being subsequently discovered that the plaintiff had appropriated the property to his own use, falsely alleging that he had never had possession of a great portion of it, the defendants (one of whom was the solicitor of Mr. Tunncliffe) went with a police-officer to the plaintiff's house, took him into custody, and conveyed him before a magistrate on a charge of felony. The plaintiff was ultimately discharged, the magistrate doubting whether a charge of felony could be supported. At the trial a witness of the name of Hannah Jenkins was called on behalf of the plaintiff, who deposed that she was present at the auction, and remembered the piece of furniture in question being put up for sale and bought by the plaintiff; that after it was sold, an observation was made by some of the bystanders, to the effect that

the plaintiff might have bought something more than the bureau, as one of the drawers would not open; upon which the auctioneer said, "so much the better for the buyer," adding, "I have sold it with its contents, and it is his." This statement was opposed by the evidence of the auctioneer, who stated, on cross-examination by the defendant's counsel, that there was one drawer which would not open, and that what he had said was, "that is of no consequence, I have sold the secretary and not its contents." It did not appear that any person knew that the bureau contained anything whatever. It was held that if the buyer had express notice that the bureau alone, and not its contents, if any, was sold to him; or if he had no reason to believe that any thing more than the bureau itself was sold, the abstraction of the money was a felonious taking, and he was guilty of larceny in appropriating it to his own use. But that if he had reasonable ground for believing that he bought the bureau with its contents, if any, he had a colourable right to the property, and it was no larceny. *Merry v. Green*, 7 Mee. & W. 623.

CHANGES IN THE LAW,

IN THE LAST SESSION OF PARLIAMENT.

NO. I.

ADMINISTRATION OF JUSTICE IN EQUITY.

5 VICT. C. 5.

[Continued from p. 490.]

32 *Appointment of R. Richards, Esquire, to be a Master in Chancery. Certain depending references transferred to him, and such others as the Lord Chancellor shall direct.*—And be it enacted, that Richard Richards, Esquire, the present Accountant General, and one of the Masters of the said Court of Exchequer, shall, on the said fifteenth day of October one thousand eight hundred and forty-one, become by force of this act a Master in ordinary of the High Court of Chancery, in addition to the present Masters in ordinary of the said Court of Chancery, with the like privileges, duties, powers, authority, and jurisdiction which are now vested in or may be exercised by a Master in ordinary of the said Court of Chancery; and he and his successors shall take the usual oaths before the Lord Chancellor, in like manner as the same are at present administered to Masters in ordinary of the said Court of Chancery: and that all references which on the said fifteenth day of October shall be depending before the Masters on the equity side of the said Court of Exchequer shall be by force of this act transferred to the said Richard Richards as a master in ordinary of the said Court of Chancery, and such other references shall also be made to the said Richard Richards by the said Court of Chancery as the Lord Chancellor shall by any general order from time to time direct.

33 *Her Majesty empowered by letters patent to appoint successors to Mr. Richards.*—And

be it enacted, that upon the death, resignation, or removal from office of the said Richard Richards, and upon the death, resignation, or removal from office of any of his successors, it shall be lawful for Her Majesty from time to time, by letter, patent under the Great Seal of the United Kingdom, to appoint a fit and proper person to supply such vacancy.

34. *N. Buckland, the present Clerk to the Masters in Exchequer, to be chief Clerk to Mr. Richards. Appointment of junior Clerk, &c.*—And be it enacted, that Neal Buckland, the present clerk to the Masters and Accountant General of the Court of Exchequer, shall, on the said fifteenth day of October one thousand eight hundred and forty-one, become by force of this act chief clerk to the said Richard Richards and his successors, as Master in ordinary of the said Court of Chancery: and that it shall be lawful for the said Richard Richards to appoint a junior clerk; and that on any vacancy in such offices of chief clerk and junior clerk respectively such vacancy shall be supplied as vacancies in the offices of chief clerk and junior clerk to the Masters are now or may for the time being be supplied; and such chief clerk and junior clerk respectively shall perform all the same duties with respect to the receipt and payment of fees, and in all other respects, as the chief clerks and junior clerks of the Masters in ordinary of the said Court of Chancery respectively now do or may for the time being perform, and shall hold their respective offices in like manner as such chief clerks and junior clerks respectively now do or may for the time being hold their respective offices; and that it shall be lawful for such junior clerk for the time being to receive and take such money for copying documents or writings as may for the time being be taken by the junior clerks to the Masters of the said Court of Chancery.

35. *Salaries to Vice Chancellor and his officers, and to master, to be paid out of the interests and dividends arising from suitors' fund.*—And be it enacted, that, out of the interest and dividends that have arisen or may hereafter arise from the government or parliamentary securities now, or hereafter to be placed in the name of the Accountant General of the said Court of Chancery to the two accounts, intitled "account of monies placed out for the benefit and better security of the suitors of the High Court of Chancery," and "account of securities purchased with surplus interest arising from securities carried to an account of monies placed out for the benefit and better security of the suitors of the High Court of Chancery," or either of them, there shall be paid (but subject and without prejudice to the payment of all salaries or sums of money by any former act or acts now in force directed or authorized to be paid thereout), by the governor and company of the bank of England, by virtue of any order or orders of the Court of Chancery to be made from time to time for that purpose, without any draft from the Accountant General, the several salaries herein-after mentioned; (that is to say,) the net

yearly sum of five thousand pounds to each Vice Chancellor for the time being to be appointed under this act, the net yearly sum of three hundred pounds to his secretary, the net yearly sum of two hundred pounds to his usher, the net yearly sum of one hundred pounds to his trainbearer, and the net yearly sum of two thousand five hundred pounds to the said Richard Richards and his successors in the said office of master in ordinary of the said Court of Chancery; which salaries shall be free from all taxes, deductions, and abatements whatsoever out of the same, or any part thereof, and (except the salary of the said Richard Richards and his successors) shall be paid quarterly, on the eleventh day of January, the eleventh day of April, the eleventh day of July, and the eleventh day of October in every year, by equal portions; and the first of such payments to each such Vice Chancellor and his officers respectively, or a proportionate part thereof, to be computed from the time of the appointment of such Vice Chancellor, shall be made on such of the same days of payment as shall first happen after the date of the letters patent appointing such Vice Chancellor; and the said salary to the said Richard Richards and his successors shall be paid quarterly, on the twenty-fifth day of February, the twenty-fifth day of May, the twenty-fifth day of August, and the twenty-fifth day of November in every year, by equal portions, the first of such quarterly payments to the said Richard Richards and his successors, or a proportionate part thereof, to be computed from the time of his appointment, to be made on such of the same days of payment as shall first happen after the said fifteenth day of October one thousand eight hundred and forty-one, or after the date of the letters patent appointing such successor, as the case may be; and that upon the resignation, death, or removal from office of any such Vice Chancellor, master, secretary, usher, and trainbearer respectively, such Vice Chancellor, master, secretary, usher, or trainbearer respectively, or their respective executors and administrators, as the case may be, shall be paid such proportionate part of their respective salaries aforesaid as shall have accrued from the times of the commencement of such salaries respectively, or from the last quarterly day of payment thereof to the time of such resignation, death, or removal from office; and that the succeeding Vice Chancellor, master, secretary, usher, or trainbearer respectively shall be paid such proportionate part of their respective salaries as shall be accruing or shall accrue from the day of the resignation, death, or removal from office of the preceding Vice Chancellor, master, secretary, usher, or trainbearer respectively.

36. *Her Majesty empowered to grant an annuity to a Vice Chancellor on his resignation. Such annuity may be limited as heretofore mentioned. Period of service.*—And be it enacted that it shall be lawful for Her Majesty, by any letters patent under the Great Seal of the United Kingdom, to give and grant unto any

person executing the office of Vice Chancellor in pursuance of this act an annuity not exceeding three thousand five hundred pounds, to commence and take effect immediately after the period when the person to whom such annuity shall be granted shall resign the said office of Vice Chancellor, and to continue from thenceforth during the natural life of the person to whom the same shall be granted; and such annuity shall be issued and payable out of and charged and chargeable upon the consolidated fund of the United Kingdom of Great Britain and Ireland, next in order of payment to, and after paying and reserving sufficient to pay, all such sums of money as may by any act or acts of parliament now in force have been directed to be paid thereout, but with preference to all other payments which shall hereafter be charged upon or payable out of the same fund; and such annuity shall be paid quarterly, free from all taxes and deductions whatsoever, on the four usual days of payment in the year; (that is to say,) the fifth day of January, the fifth day of April, the fifth day of July, and the tenth day of October in every year, by equal portions; and the first quarterly payment, or a proportionate part thereof, to be computed from the time of the resignation of the said office, shall be made on such of the same days as shall next happen after the resignation of the said office; and that the executors or administrators of the person to whom the same annuity shall be granted as aforesaid shall be paid such proportionate part of the said annuity as shall accrue from the commencement or the last quarterly payment thereof, as the case may be, to the day of his death; provided always, that it shall be lawful for Her Majesty, in and by such letters patent, to limit the duration of payment of such annuity, or any part thereof, to such periods of time during the natural life of such person in which he shall not exercise any office of profit under Her Majesty, so that such annuity, together with the salary and profits of such other office, shall together not exceed in the whole the said sum of three thousand five hundred pounds: provided also, that no annuity granted to any person having executed the office of Vice Chancellor under this act shall be valid unless such person shall have continued in the said office, or in the said office and the office of a judge in one or more of Her Majesty's superior Courts of common law at Westminster, for the period of fifteen years, or shall be afflicted with some permanent infirmity disabling him from the due execution of his office, which shall be distinctly recited in the said grant.

37. *Regulating future salaries of Vice Chancellor appointed under 53 G. 3, c. 24.*—And be it enacted, that from and after the death, resignation, or removal of the present Vice Chancellor of England the salary payable to the Vice Chancellor for the time being appointed under the said act passed in the fifty-third year of the reign of King George the third shall be reduced to the yearly sum of five thousand pounds, and the salary of his secretary shall be reduced to the yearly sum of three hun-

dred pounds; and that no greater annuity chargeable upon the consolidated fund than the annuity of three thousand five hundred pounds shall be granted by Her Majesty to any person executing the office of Vice Chancellor, to take effect upon his resigning such office, other than the present Vice Chancellor.

38. *Number of registrars increased to ten.*

3 & 4 W. 4. c. 94. *Provisions for filling up vacancies.*—And whereas by an act passed in the fourth year of the reign of His Majesty King William the Fourth, intituled "an act for the regulation of the proceedings and practice of certain offices of the High Court of Chancery," six registrars of the said Court of Chancery were appointed, and provision was thereby made for filling up vacancies in the office of Registrar of the said Court: and whereas it is expedient and necessary that the number of registrars of the said Court of Chancery should be increased; be it therefore enacted, that from and after the said fifteenth day of October, one thousand eight hundred and forty-one there shall be ten registrars of the said Court; and that Edward Dod Colville, Esquire, the present first registrar of the Court of Chancery; Joseph Collis, Esquire, the present second registrar of the Court of Chancery; Robert Onebye Walker, Esquire, the present third registrar of the Court of Chancery; Francis Henry Davis, Esquire, one of the present sworn clerks of the Court of Exchequer; Henry Edgeworth Bicknell, Esquire, the present fourth registrar of the Court of Chancery; Henry Hussey, Esquire, the present fifth registrar of the Court of Chancery; Hugh Wood, Esquire, one of the present sworn clerks of the Court of Exchequer; Francis Robert Bedwell, Esquire, the present sixth registrar of the Court of Chancery; Cecil Monro, Esquire, the present first clerk to the registrars of the Court of Chancery; and Edward Dod Colville, junior, Esquire, the present second clerk to the registrars of the said Court of Chancery, shall be such ten registrars, and shall rank in the order and course in which they are herein respectively named; and that (subject nevertheless to the provisions hereinafter contained) on the death, resignation, promotion, or removal of any of the ten registrars of the said Court of Chancery, other than the junior of the same registrars, the vacancy thereby occasioned shall be filled up by the registrar next in seniority, to whom no sufficient objection to the satisfaction of the Lord Chancellor shall be made, or by the senior of the clerks to the registrars for the time being, to whom no sufficient objection to the satisfaction of the Lord Chancellor shall be made, in case the junior of the same registrars for the time being, but for some sufficient objection to the satisfaction of the Lord Chancellor being made, would have been the person to supply such vacancy; and that on the death, resignation, promotion, or removal of the junior registrar for the time being, the vacancy thereby occasioned shall be filled up by the senior of the clerks to the registrars for the time being, to whom no sufficient objection to the satisfaction

of the Lord Chancellor shall be made; and that each of such persons so appointed to be registrars, and all and every persons and person hereafter to be appointed to be such registrars or registrar, shall be and are hereby authorised, empowered, and required personally to do and perform all such acts, deeds, matters, and things necessary and proper in the due execution of their said offices as belong or appertain thereto, with respect to the receipt and payment of fees, and in all other respects, except so far as the same may be altered or varied by any rules or orders to be made or issued by the Lord Chancellor relative thereto.

39. *Registrars to attend each judge of the Court as the Lord Chancellor, &c., shall direct. In case of illness they may appoint a deputy. On failure of appointment for two days, the Lord Chancellor to appoint.*—And be it enacted, that the registrars of the said Court of Chancery shall attend the Court of the Lord Chancellor, the Court of the Master of the Rolls, the Court of the Vice Chancellor appointed in pursuance of the said act passed in the fifty-third year of the reign of King George the third, and the Courts of the Vice Chancellors to be appointed under this act, in such order and manner as shall be found most expedient for furthering the business of the Court, and as the Lord Chancellor, with the concurrence of the Master of the Rolls and Vice Chancellors for the time being, or any two of them, shall from time to time by any general order direct; and that in case of illness it shall be lawful for any of such registrars, from time to time as occasion may require, to appoint a deputy, such deputy, and also the occasion for such appointment, to be first approved by the Lord Chancellor, upon a petition, to be verified by affidavit, for such time and under such general regulations as the Lord Chancellor, with the concurrence of the Master of the Rolls and Vice Chancellors for the time being, or any two of them, shall direct; and no such appointment of a deputy shall continue for any longer time than shall be allowed and specified in and by the order which shall be made by the Lord Chancellor upon such petition; provided, that in case any registrar of the said Court who shall be prevented by illness from giving his personal attendance shall omit for the space of two days to appoint such deputy the Lord Chancellor shall, if he shall see fit, himself appoint such deputy, and direct what part of the salary of such registrar shall be received by such deputy, and the same shall be paid over to and received by him accordingly.

40. *Clerks to the registrars increased to twelve. Vacancies to be filled up by seniority.*—And be it enacted, that from and after the said fifteenth day of October one thousand eight hundred and forty-one, there shall be twelve clerks to the registrars of the said Court of Chancery; and Richard Howell Leach, the present third clerk to the registrars of the Court of Chancery; Percival Bedwell, the present fourth clerk to the registrars of the said Court of Chancery; Henry Latham, the present fifth clerk to the registrars of the Court

of Chancery; James Thomas Fry, the present sixth clerk to the registrars of the said Court of Chancery; Thomas Ellis Adlington, one of the present sworn clerks of the Court of Exchequer; Francis Henry Rich, one of the present side clerks of the Court of Exchequer; Frederick Metcalfe, the present seventh clerk to the registrars to the Court of Chancery; John Lewis Merivale, the present eighth clerk to the registrars of the Court of Chancery; Frank Milne, one of the present side clerks of the Court of Exchequer; and three persons duly qualified, to be appointed by the Lord Chancellor, shall be such twelve clerks to the registrars of the Court of Chancery, and, as to the persons herein named, shall rank in the order and course in which they are herein respectively named; and that (subject nevertheless to the provisions herein-after contained) on the death, resignation, promotion, or removal of any of the twelve clerks to the registrars of the said Court of Chancery, other than the junior clerk, the vacancy thereby occasioned shall be filled up by the clerk next in seniority, to whom no sufficient objection to the satisfaction of the Lord Chancellor shall be made, or by any person who, under the provision herein-after contained, shall be eligible to the office of twelfth clerk, in case the twelfth clerk for the time being, but for some sufficient objection to the satisfaction of the Lord Chancellor being made, would have been the person to supply such vacancy.

41. *Lord Chancellor to appoint tenth, eleventh, and twelfth clerk, and to fill up vacancies in office of twelfth clerk.*—And be it enacted, that the Lord Chancellor shall appoint some proper person who shall have been admitted and entered on the roll of solicitors or attorneys of some one of Her Majesty's Courts in Westminster Hall, or who shall have duly served a term of not less than five years under articles of clerkship to some solicitor or attorney of some one of the said Courts, to be tenth, eleventh, and twelfth clerk to the said registrars, and shall in like manner supply vacancies in the office of twelfth clerk to the registrars whenever the same shall happen.

42. *Lord Chancellor empowered to increase the number of clerks in the registrar's office.*—And be it enacted, that if it shall hereafter appear to the Lord Chancellor that the business of the registrar's office cannot be discharged with due despatch without more than twelve clerks, then and in such case it shall be lawful for the Lord Chancellor from time to time to appoint one or more additional clerk or clerks to the registrars, being a person or persons who, under the provisions of this act, shall be eligible to the office of twelfth clerk to the registrars; and such additional clerk or clerks shall succeed to and fill any vacancy when and as the same may occur by any death, resignation, promotion, or removal of any other clerk to the registrars, in the same manner as the right of succession is given to the before-named clerks, but subject in all cases to cause being shewn to the contrary to the satisfaction of the Lord Chancellor.

43. Preserving rights of present registrars and clerks.—Provided always, and be it enacted, that the present registrars and clerks to the registrars of the said Court of Chancery, other than the said Francis Robert Bedwell and Edward Dodd Colville, junior, shall respectively have such and the same right of succession to the offices of first registrar, second registrar, third registrar, fifth registrar, sixth registrar, ninth registrar, senior clerk to the registrars, second clerk to the registrars, third clerk to the registrars, and fourth clerk to the registrars, as, under the said act passed in the fourth year of the reign of His Majesty King William the Fourth, they would have had to the offices of registrars and clerks to the registrars appointed by or under the same act, if this act had not passed, and the said Francis Robert Bedwell had ceased to be a registrar, and the said Edward Dodd Colville, junior, had ceased to be clerk to the registrars, and had not become registrar.

44. Provision as to succession of sworn clerks, &c.—Provided also, and be it enacted, that such of the present sworn clerks and side clerks of the Court of Exchequer as are hereby appointed registrars or clerks to the registrars of the said Court of Chancery, and the said Francis Robert Bedwell, and Edward Dodd Colville, junior, shall have such and the same right of succession to the offices of fourth registrar, seventh registrar, eighth registrar, tenth registrar, fifth clerk to the registrars, and sixth clerk to the registrars, as, under the said act passed in the fourth year of the reign of His Majesty King William the Fourth, they would have had to the offices of registrars and clerks to the registrars appointed by or under the same act, in case four registrars only, and three clerks to the registrars only, had been appointed by the same act, and the said sworn clerks and side clerks, and the said Francis Robert Bedwell, and Edward Dodd Colville, junior, had been appointed to the same offices respectively in the order in which they are hereby appointed.

45. Office of master of reports and entries.—And be it enacted, that the several registrars of the said Court of Chancery and the clerks to the registrars shall, in the event of a vacancy in the office of master of the reports and entries, according to their seniority, be entitled to succeed; but any such registrar or clerk so taking such office shall vacate his office of registrar or clerk, and shall not be entitled to fill either of such offices, or to succeed to any other registrar or clerk: provided always, that the present registrars and clerks to the registrars shall have such and the same right of succession to the same office as they would have had under the said act passed in the fourth year of the reign of His Majesty King William the Fourth if this act had not passed.

46. Duties of Registrars' clerks.—And be it enacted, that the several clerks to the said registrars appointed and to be appointed under this act, shall personally perform all such matters and things as are necessary and proper in the due execution of the business of the said

office of the registrars, and as are now done and performed by the clerks to the registrars of the said Court of Chancery, with respect to the receipt and payment of fees, and in all other respects, excepting so far as the same shall be varied by any rules or orders to be made or issued by the Lord Chancellor relative thereto.

47. Lord Chancellor may appoint persons to keep order in Courts.—And be it enacted, that it shall be lawful for the Lord Chancellor to appoint one or more person or persons, removable at pleasure, for the purpose of keeping order in the Courts of the Vice Chancellors to be appointed under the authority of this act.

48. Masters, registrars, and clerks to registrars, to hold their offices during good behaviour, and with other officers to be subject to prohibitions, &c.—And be it enacted, that the Masters in Ordinary, registrars, and clerks to the registrars, appointed and to be appointed under this act, shall hold their respective offices during their good behaviour, and so long as they shall personally give their attendance upon their respective duties, and shall conduct themselves honestly and faithfully in the due execution of the duties of their said offices respectively; and that they, and all other persons holding any office, situation, or employment in any office of the said Court of Chancery, or under any of the judges or officers thereof, under this act, shall be subject or liable to such and the same prohibitions, prosecutions, penalties, and punishments as are by the said act passed in the fourth year of the reign of King William the Fourth imposed or directed with respect to the Masters in Ordinary of the said Court of Chancery, and other persons holding any office, situation, or employment in the same Court or under any of the judges or officers thereof, in the same manner as if the enactments therein contained relating to such masters and other officers of the said Court respectively were here repeated.

49. Power to Lord Chancellor to remove officers, &c. 3 & 4 Vict. c. 94.—And be it enacted, that it shall be lawful for the Lord Chancellor, with the concurrence of the Master of the Rolls and Vice Chancellors for the time being, or any two of them, by any order, to remove from his office any officer for the time being of the said Court of Chancery holding office during good behaviour (other than a Master in Ordinary), for some sufficient cause, to be in such order expressed; and that any officer, clerk, or messenger appointed or to be appointed under the authority of an act passed in the fourth year of the reign of Her present Majesty, intituled "An act for facilitating the Administration of Justice in the Court of Chancery," shall be removable at the pleasure of the Lord Chancellor, with the concurrence of the Master of the Rolls and Vice Chancellors for the time being, or any two of them.

[To be continued.]

POINTS OF PRACTICE, BY QUESTION AND ANSWER.

BANKRUPTCY.—TRADING.

[See p. 484, *ante*.]

1. The declarations of a bankrupt to a party with whom he is dealing, respecting his transactions in trade, are not evidence to prove the trading of such bankrupt. *Brinley v. King*, 1 Carr. & P. 646; S. C. Ry. & Moo 228.
2. In order to constitute a party a trader within the meaning of the bankrupt laws, it is sufficient that he acknowledge himself to have been in partnership with one who was a trader, and is proved to have given directions in the concern; though no act of buying or selling during the time of the partnership can be established in evidence. *Parker v. Barker*, 1 Brod. & B. 9; S. C. 3 Moore, 226.
3. A trader, in a commission of bankrupt issued against him, is described as a money scrivener only. It is, nevertheless, competent to a plaintiff to support the commission by proof of any species of trading, notwithstanding the omission of the general words, "dealer and chapman." *Smith v. Sandilands*, Gow, 171.
4. If a trader ceases to manufacture, but still continues to solicit orders and to execute them, and holds himself out to the world as capable of executing them, he is an object of the bankrupt laws. *Wharam v. Routledge*, 5 Esp. 235.
5. If one procure orders for goods, having no stock, but buying them for those who have, he making out bills to his customers, in his own name, and being himself debited by the person he buys of, this is a trading within the bankrupt laws; but if he procures orders for another, and is by that other person paid a commission, the other person sending the goods to the customers, this was not a trading within the bankrupt laws, antecedent to the act 6 Geo. 4, c. 16. *Doe, dem. Burrard v. Lawrance*, 2 Carr. & P. 134.
6. A schoolmaster buying books and shoes, and selling them at an advanced price to his scholars, is not a trader within the bankrupt laws. *Valentine v. Vaughan*, Peake, 108.
7. Merely drawing bills on a person's own account, at the expense of paying a quarter per cent. commission, besides interest at five per cent. for their being discounted, and borrowing accommodation notes in exchange for his own, to the same amount, will not make a man an object of the bankrupt laws. *Hankey v. Jones*, 2 Cowper, 745.
8. The purchase of one lot of timber, with intent to sell again, will make a man a trader. *Halroyde v. Gwynne*, 2 Taunt. 176.

A person living in the Isle of Man, coming from time to time to England, and buying goods which were afterwards sold in the Isle of Man, is a trader against whom a commission of bankrupt may issue in England, although he never, in fact, sold any goods in England. *Allen v. Cannon*, 4 B. & Ald. 418.

10. A commission of bankrupt may be supported on a debt accruing before the bankrupt became a trader, and an act of bankruptcy committed after he has ceased to be a trader. *Bailey v. Grant*, 9 Bing. 121; S. C. 2 Moo. & S. 193.
11. A commission of bankrupt cannot be supported against a person under age. *O'Brien v. Currie*, 3 Carr. & P. 283.
12. The wife of a convicted felon, sentenced to transportation beyond the seas for the term of fourteen years, but removed to and confined on board one of the hulks in this country, is liable to be made a bankrupt, if she trade on her own account, although she is in the habit of visiting her husband and holding communication with him during his confinement. *Ex parte Franks*, 1 Moo. & Sc. 1; S. C. 7 Bing. 762.
13. A smuggler may be a trader within the 1 Jac. 1, c. 15, s. 2, as being a person who seeks his living by buying and selling, although such buying be illegal. *Cobb v. Symonds*, 5 B. & Ald. 516; S. C. 1 D. & R. 111.
14. A farmer, who occasionally buys hay, corn, horses, &c., with a view to sell again for profit, does not thereby make himself a trader within the bankrupt laws. *Stewart v. Ball*, 2 New Rep. 78.
15. A person who rents a brick ground, and makes bricks thereon for public sale, is subject to the bankrupt laws. If a man exercise a manufacture from the produce of his own land, as a necessary or usual mode of enjoying that produce, he shall not be considered a trader, though he buy necessary ingredients to fit it for the market; but where the produce of the land is merely the raw material of manufacture, and the manufacture not the necessary mode of enjoying the land, there he is a trader. *Wells v. Parker*, 1 T. R. 34.

HORSEMANSHIP OF LAWYERS.

To the Editor of the Legal Observer.

Sir,

YOUR remarks in a late Number on horses, suggest some other observations, if you please to accept them.

First, as to colour.—A lawyer should never ride a white horse. It rarely suits his complexion, and is too conspicuous. A grey is very doubtful, but in some cases admissible—as an iron-grey for instance. All fancy colours are also to be avoided.

Next as to size.—A lawyer's horse should never be too large. I have known many eminent lawyers ride a poney without any discredit; but I never knew one who had a horse sixteen hands high.

Thirdly, as to breeding.—A lawyer is not a jockey; he does not ride races, and as you justly say, knows nothing of horse-flesh. He never hunts, be assured, if he is worth anything; a thorough-bred is therefore quite out of the question. I recommend a quiet re-

spectable cob, with short ears and tail, as highly legal; but I do not say that a switch tail may not be adopted. I have seen an excellent special pleader ride a switch tail mare.

Fourthly, as to saddle, &c.—I should heartily despise a man who was seen with a bran new saddle, &c.

Fifthly, as to servant.—A Queen's Counsel may have a groom; but I do not think a junior has any right to one; but if he has, let him particularly avoid gold lace round the hat, or a coat lined with red or yellow. No junior who respects himself will allow this.

I fully concur with you, Sir, in the advantage of riding, and wish you, together with a nice nag, in the language of Lord Coke, "the gladsome light of jurisprudence, the loveliness of temperance, the stability of fortitude, and the solidity of justice."^a

MILES.^b

^a Co. Litt. 395. a

^b *Miles* in the same sense as adopted by the same Lord Coke. See the title-page of his Institutes.

NEW STANDING ORDERS RELATING TO PRIVATE BILLS IN PARLIAMENT.

THE following resolutions of the House of Commons are extracted from the Votes and Proceedings of the 5th of October.

Standing Order, No. 1, read, as follows:—

"Resolved, That a committee be appointed at the commencement of every session, consisting of forty-two members, of whom five shall be a quorum in opposed cases, and three a quorum in unopposed cases, to which shall be referred all petitions for private bills, and such committee shall be denominated "The Select Committee on Petitions for Private Bills."

Resolved, That a committee be appointed at the commencement of every session, consisting of forty-two members, of whom five shall be a quorum in opposed cases, and three a quorum in unopposed cases, to which shall be referred all petitions for private bills, *with their annexed bills*;^a and such committee shall be denominated "The Select Committee on Petitions for Private Bills."

Standing Order, No. 119, read as follows:

Resolved, That no private bill be brought into this House, but upon a petition first presented, truly stating the case: and that such petition be signed by the parties, or some of them, who are suitors for the bill.

Standing Order repealed:—

Resolved, That no private bill be brought into this House, but upon a petition first presented, *with a printed copy of the proposed bill annexed*;^a and that such petition be signed by the parties, or some of them, who are suitors for the bill.

^a The words in italics, it will be observed, are new.

Standing Order, No. 120, read as follows:

Resolved, That all petitions for private bills be presented within fourteen days after the first Friday in every session of parliament.

Standing Order repealed:

Resolved, That all petitions for private bills be presented within *twenty-one days*^b after the first Friday in every session of parliament.

Resolved, That in the case of any application for a private bill relating to England, the committee may admit proof of the compliance with the Standing Orders which refer to the affixing to the church doors the requisite notices on the production of affidavits sworn before any justices in petty sessions assembled for the division within which the churches on which the notices have been affixed, shall be respectively situated.^c

Ordered, That the said resolutions be Standing Orders of this House.

Standing Order, No. 14, read as follows:

Resolved, That notices shall be given in all cases where application is intended to be made for leave to bring in a bill included in any of the following classes:

1st Class.—Bills for inclosing, draining, or improving lands; making, maintaining, or altering a burial ground; building, enlarging, repairing or maintaining, a church or chapel;

Paving, lighting, watching, cleansing or improving cities or towns;

Erecting, improving, repairing, maintaining or regulating shire or county or town halls, market-places or markets;

Constituting any local court;

The payment of any stipendiary magistrate or other public officer;

Bills relating to poor rates or the maintenance or employment of the poor.

2d Class.—Bills for making, maintaining, varying, extending or enlarging any bridge, turnpike road, cut, canal, reservoir, aqueduct, waterwork, navigation, tunnel, archway, railway, pier, port, harbour, ferry or dock.

3d Class.—Bills relating to county rates, gaols or houses of correction, or for confirming, prolonging or transferring the term of letters patent; or conferring powers to sue and be sued, or for incorporating or giving any power to any company, or bills to constitute or amend any former act passed for any of the purposes included in this or the two preceding classes, where no further work than such as was authorised by any former act is proposed to be made.

Standing Order repealed.

Resolved, That notices shall be given in all cases where application is intended to be made for leave to bring in a bill relating to the subjects included in any of the following classes:

1st Class.—Inclosing, draining or improving lands;

^b The time is thus extended from fourteen to twenty-one days.

^c This resolution is new.

Making, maintaining, or improving a fishery;^e

Making, maintaining or altering a burial ground;

Building, enlarging or maintaining a church or chapel.

Paving, lighting, watching, cleansing or improving a city or town.

Erecting, improving, repairing, maintaining or regulating a shire or county hall, market place or market;

Constituting a local court;

Payment of a stipendiary magistrate or other public officer;

Maintaining or employing the poor, or affecting poor rates.

Crown, church or corporation property, or property held in trust for public or charitable purposes.^e

2d Class.—Making, maintaining, varying, extending or enlarging,

An aqueduct	A navigation,
An archway,	A pier,
A bridge,	A port,
A canal,	A railway,
A cut,	A reservoir,
A dock,	A tunnel,
A ferry,	A turnpike road,
A harbour,	A waterwork.

3d Class.—County rates.

A gaol or house of correction;

Confirming, prolonging or transferring the term of letters patent;

Incorporating or giving powers to a company;

Continuing or amending an act passed for any of the purposes included in this or the two preceding classes, where no further work than such as was authorised by any former act, is proposed to be made.

Standing Order, No. 15, read, as follows:—

Resolved, That notices shall also be given in all cases of estate bills relating to the crown, church, corporation or charity property, held in trust for public or charitable purposes, whether it be intended that such bills shall originate in this or in the other house of parliament.

Standing Order repealed.^f

Standing Order, No. 17, read, as follows:—

Resolved, That it be the intention of the parties applying for leave to bring in a bill, to levy any tolls, rates or duties, or to alter any existing tolls, rates or duties, the notices shall specify such intention.

Standing Order repealed.

Resolved, That if it be the intention of the parties applying for leave to bring in a bill to levy any tolls, rates or duties, or to alter any existing tolls, rates or duties, *or to confer, vary,*

or extinguish any exemptions from payment of tolls, rates, or duties, or any other rights or privileges,^g the notices shall specify such intention.

Standing Order, No. 22, read, as follows:—

Resolved, That in cases of bills included in the 2d Class, all notices shall contain the names of the parishes, townships and extra-parochial places from, in, through or into which the work is intended to be made, maintained, varied, extended or enlarged, and shall state the time and place of deposit of the plans, sections and books of reference respectively, with the clerks of the peace, parish clerks, schoolmasters, town clerks and postmasters as the case may be. (See Nos. 23 and 27).

Standing Order, No. 38, read, as follows:—

Resolved, That in all cases where it is proposed to make, vary, extend or enlarge any turnpike road or railway, the plan shall exhibit thereon the height of the several embankments, and the depth of the several cuttings respectively, on a scale specified thereon. (See Fig. 1).

Standing Order repealed.

Resolved, That in all cases where it is proposed to make, vary, extend or enlarge any railway, the plan shall exhibit thereon the height of the several embankments, and the depths of the several cuttings respectively, on a scale specified thereon. (See Fig. 1).^h

Standing Order, No. 161, read, as follows:—

Resolved, That a filled-up bill, signed by the agent for the bill, as proposed to be submitted to the committee, be deposited in the private bill-office at the time of giving notice of the meeting of the committee, and in the case of a re-committed bill, a filled-up bill, as proposed to be submitted to the committee on re-committal, shall be deposited in the Private Bill Office on the day that the order for such re-committal shall be made; and that all parties shall be entitled to a copy thereof, upon payment of the charges for making out amendments of such bill.

Standing Order repealed.

Resolved, That a filled-up bill, signed by the agent for the bill, as proposed to be submitted to the committee on the bill, be deposited in the Private Bill Office at the time of giving notice of the meeting of the committee on the bill; and in the case of a re-committed bill, a filled-up bill, as proposed to be submitted to the committee on re-committal, shall be deposited in the Private Bill Office *three clear days before the day appointed for the meeting of such committee*; ⁱ and that all parties shall be entitled to a copy thereof upon payment of the charges for making out amendments of such bill.

Ordered, that the said resolutions be Standing Orders of this House.

^e The clauses in italics are new; the others are differently arranged and expressed, but the same in substance as in the previous Standing Orders.

^f This Order, though here repealed, is included in the foregoing New Order.

^g This regulation was not in the previous Order.

^h The difference between this and the former Order is, that the new one applies to railways only, and not to turnpike roads.

ⁱ The time here fixed is new.

Schedule to Appendix A. of Standing Orders, p. 74, amended as follows:—After the word 'parish' be inserted 'township, townlands, or extra-parochial place;' again, after the word 'parish,' be inserted 'township, town lands, or extra-parochial place.'

MOOT POINTS.

MORTGAGE STAMP.

With due deference to the opinion of J. B. A., (*ante*, p. 397,) I cannot avoid thinking that an *ad valorem* stamp is not necessary, in the case put by "A Subscriber," p. 349. In my opinion the relationship of mortgagor and mortgagee subsisted between A. and B. during the whole transaction; the conveyance to C. in trust for sale, was made for better securing the mortgage money, and subject to the mortgage, the estate was (notwithstanding the conveyance to C.) still in equity the property of A., who, on satisfying the mortgage, was entitled to call for a re-conveyance of it. The fact of the mortgagee accepting a less sum than was due makes no difference, nor do I see any material distinction between this case, and the common one of a mortgage in fee with power of sale to the mortgagee. It might, with equal propriety be contended, that, in the latter case (after the expiration of the time limited in the proviso for redemption) the mortgagor could not pay off the mortgage, without being deemed a purchaser under the power of sale.

J. J. W.

DEVISE TO LAWFUL HEIRS.

In the case stated by "A Subscriber," at p. 446, *ante*, there cannot be the shadow of a doubt that J. B. took an estate in fee, for the rule being that a devise to a man and his heirs passes the fee-simple, the addition of the word "lawful," expressing what the law would otherwise have intended, cannot certainly alter the case. In addition to this, the fact of the land being charged with the payment of debts would, according to the established rule, be sufficient to shew that it was the testator's intention that J. B. should have the absolute dominion over the property. I have not been able to find any case in point, but the conclusion is so obvious, that it seems doubtful whether any such case has been litigated.

A M. C.

RE-ENTRY, ON FORFEITURE OF LEASE, BY CONSTABLE.

In answer to "Civis, A," p. 411, *ante*, I will remind him that ejectment is the only means (except in those cases where justices of the peace exercise a summary jurisdiction, with which your correspondent is, no question, acquainted) to be employed for the recovery of land, whenever a person entitled to land has a right of entry, he may, if the premises be unoccupied and vacant, in a peaceable manner and without using such violence as would

amount to a forcible entry, enter and take possession without any legal formality. *Taylor v. Cole*, 3 T. R. 296; Arch. Q. B. vol. 2, 731. The addition of the words, "with the aid of a constable," &c., to the clause of re-entry, are wholly inoperative, I apprehend, inasmuch as the law has, in the event contemplated, provided a remedy; and "Civis, A." cannot go this short way to work, unless indeed he is minded to be indicted for forcible entry; (see 1 Bing. 158) though, I admit, it might be convenient in some cases.

A. CIVIS.

SELECTIONS FROM CORRESPONDENCE.

LANDLORD AND TENANT.—SUMMARY REMEDY.

Sir,

My attention has been lately called to s. 13, of the act of 3 & 4 Vict. c. 84, intituled "an Act for better defining the powers of Justices, within the Metropolitan Police District."

By the above act, the benefits derived by landlords within the metropolitan police districts, under the act of 11 Geo. 2, c. 19, is very much lessened, if not entirely done away with.

I had occasion lately to apply at the Police Court, Hatton Garden, for the usual process in a case where the demised house has been deserted by the tenant, and left unoccupied so as no sufficient distress can be had to countervail the arrears of rent, and was informed by the clerk that in consequence of the alteration in the law, and the very loose way in which the clause was drawn up, there was much difficulty in acting upon it, and he said that he would not undertake to prepare the necessary forms.

Having thus pointed out the grievance, perhaps some of your readers may be able to suggest what course should be pursued. It would seem, that within the metropolitan police district, the county magistrates are forbidden to act.

A LANDLORD.

MORTGAGE STAMPS.

In answer to an enquiry by P. P. at p. 411, as to the safest course in reference to premiums intended to be advanced by a mortgagee on life policies, where it is doubtful whether they will be punctually paid by the mortgagor, I beg to mention that I believe Lord Cottenham has recently had the question under his consideration, and is understood to have decided that a 25*l.* stamp is necessary where the amount proposed to be advanced is left unlimited; or that the party must limit it, and apply the *ad valorem* stamp, beyond which, whatever monies are paid, will be at the mortgagee's own risk. *Richards v. The Earl of Macclesfield* is the case to which I allude. It appeared that bankers lent a sum of money, for which the borrower mortgaged his life estate, and assigned, as security, three policies

of insurance on his life. The mortgagor covenanted to pay interest at 5l. per cent., and the premiums on the policies. By the deed, which had a stamp for 8000l., it was declared that in case of any default in the payment of the said premiums, it should be lawful for the bankers, at their option, to advance and pay such sum or sums of money as should be required to keep alive the policies; and it was declared and agreed that the sums of money so advanced as last aforesaid should stand charged upon the mortgaged premises, and should carry interest at and after the rate aforesaid, and should be recoverable in the like manner as the original sum. The Master, on reference, had allowed 10,000l.; the bankers claimed 14000l., being for principal, interest and premiums. I would refer your correspondent to the cases cited in argument, namely, *Halse v. Peters*, 2 Barn. & Ad. 807, decided by Lord Tenterden, Baron Parke, and Mr. Justice Taunton; *Doe d. Mercer v. Bragg*, 3 Nev. & Perry, 664; and *Scott v. Allsopp*, 2 Price, 20. Q. Q.

SUPERIOR COURTS.

Vice Chancellor's Court.

DISMISSAL OF BILL.—LIABILITY OF SOLICITORS TO COSTS.

A solicitor who has been induced on the representations of his clerk, to take certain proceedings in the name of a person who proves not to be in existence, will not be liable personally for the costs which may have been incurred by the party against whom he proceeded, unless it can be shown that he was cognizant of the non existence of the person in whose name he sued.

A bill filed by the defendant, against whom a verdict had been obtained at the suit of a fictitious person, to restrain further proceedings in the action, will, upon his application, be dismissed without costs.

This suit was instituted for the purpose of staying further proceedings in an action that had been brought against the plaintiff upon a bill of exchange alleged to have been accepted by him, and to have been drawn by one Peters, and in which Peters had obtained a verdict. The suit was instituted subsequently to the trial of the action, and the bill charged fraud and collusion against Peters and the other parties to the bill of exchange, one of whom was examined as a witness on the trial of the action, to prove the handwriting to the bill; but the plaintiff having afterwards discovered that there was no such person as Peters in existence, he obtained a rule in the Court of Queen's Bench for setting aside the verdict, which was made absolute, but without costs. Pending this rule, an application was made to the Vice Chancellor, and subsequently, on appeal to the Lord Chancellor for an order that Mr. Bebb, the supposed plaintiff's attorney in the action, and who had also entered an

appearance in the suit, should pay to the plaintiff in equity the costs of the suit, and also of the application, when it was ordered that the motion should stand over until the decision of the Court of Queen's Bench should be known. The rule having been made absolute in the manner above stated, the former application was now renewed in this Court.

Bruce and Tripp, for the plaintiff, submitted that Mr. Bebb, who had acted as the attorney and solicitor of Peters, the supposed plaintiff at law, and through whose proceedings the plaintiff here had been put to the heavy costs from which he now sought to be indemnified, was bound to satisfy all the costs thus improperly occasioned. Although it was evident that the transaction had been carried on by his clerk, and that he was entirely ignorant of the fraud, still he was answerable for the acts of his servant, and as somebody must suffer, it was scarcely reasonable to expect that the loss should fall upon one who could have no control over the party who had created the mischief.

Wakefield, for Bebb, insisted that as he was wholly ignorant of the fraud that had been practised, he could not be held responsible for that which was the subject of a criminal charge against another. The bill did not even suggest that there was no such person as Peters, but merely charged fraud and collusion with that supposed person, to concoct the pretended bill of exchange. The Court having ordered that service of the subpoena upon Mr. Bebb should be deemed good service, he had deemed it his duty to instruct his clerk in Court to enter an appearance; but that was the only proceeding he had taken, for before he had never intervened in the suit; and the utmost, therefore, which could be charged against him, would be any costs that had been incurred in consequence of that appearance, and as not a single step had since been taken, no claim could be made against him. It was clear, also, the plaintiff was premature in his application to this Court, for he ought to have waited till the rule in the Queen's Bench was disposed of, which would have rendered any other proceeding unnecessary. That Court, having all the facts before it, and having also had the advantage of hearing the trial of the action, had not thought Mr. Bebb's conduct so culpable as to call for the infliction of any penalty upon him in the shape of costs, and there were no proceedings in the suit which justified such a visitation.

Chundras, for Hurd, one of the defendants, and a party to the bill of exchange, but who had no interest, claimed the costs of his client.

The Vice Chancellor commenced by stating that there was nothing in the case to affect in the slightest degree Mr. Bebb's character. It appeared that the clerk, who was anxious to get business for his employer, had relied implicitly upon the statement made to him by the party who brought the bill, and that Mr. Bebb had given credit to his clerk. With regard to Hurd, as there was no ground of complaint against him, the bill must be dismissed

as against him, and the costs paid by the plaintiff; and the question then was, whether any and what costs should be paid by Mr. Bebb. As the Court of Queen's Bench had determined that Mr. Bebb should not pay any costs relating to the action, his Honor said he could not conceive why, in an incidental proceeding, he should be held liable. The plaintiff had prematurely filed his bill, without making sufficient enquiry; and although *prima facie* there was a case of *laches* against Mr. Bebb, still, as the Court of Queen's Bench had not thought it necessary to order him to pay any costs, there was no reason why a different decision should be come to in this Court. The bill must therefore be dismissed with costs, to be paid by the plaintiff as against the defendant Hurd, and without costs as against the other parties.

Elderton v. Peters and others, July 27, 1841.

Queen's Bench Practice Court.

LOTTERIES.—PROCEEDINGS FOR PENALTIES.

—46 GEO. 3, c. 148, s. 59.

Since the 46 Geo. 3, c. 148, s. 59, proceedings for the recovery of penalties for carrying on illegal lotteries, must be taken in the name of the Attorney General, and not before magistrates, and the provisions of the act are not confined to state lotteries, but extend to those of a private nature.

This was an application for the discharge of a person named Henry Tuddenham out of the custody of the keeper of the House of Correction at Little Walsingham, in the County of Norfolk, on the ground of a defect which appeared on the face of the warrant of commitment. The prisoner was now brought up under a writ of *habeas corpus*, and the warrant of committal was shewn upon the return to the writ. The warrant recited, that Tuddenham was a licensed hawker, and that on the 31st May, 1841, he was duly convicted before two magistrates at a petty sessions held at Fakenham, for that he on the 28th day of May, in the parish of East Rudham, "did in a certain room, being part and parcel of certain premises, called and known by the name of the Crown Inn, set up, exercise, maintain and keep open in a public manner a certain game of lottery, to be determined by the chance of drawing certain tickets, on which tickets certain numbers in figures were then and there marked and impressed, and on the drawing of any one of which said tickets the said Henry Tuddenham, then and there undertook, in consideration of a certain sum of money, to wit, the sum of one shilling, to him paid on demand by the drawer of the said ticket, to deliver certain goods to such drawer of such ticket, contrary to the forms of the statute." The warrant then went on to recite the judgment of the justices, that Tuddenham should for his said offence, forfeit the sum of 100*l.*, one-third of which was to be appropriated to the use of her Majesty, while the other two-thirds should

be paid to the two police officers, who had respectively given information of the offence, and apprehended the defendant: the demand of the 100*l.* of Tuddenham, his refusal to pay it, and his consequent committal in default for three months to the House of Correction at Little Walsingham.

In support of the application it was urged, that this conviction had taken place under the 42 Geo. 3, c. 119, s. 2, by which persons offending in the manner pointed out were liable to penalties, and to punishment as rogues and vagabonds, and by which certain powers of proceeding in such cases were given to justices. The more recent stat. 46 Geo. 3, c. 148, s. 59, however, made a material alteration in the course to be taken against persons keeping lotteries. That section provided, that all pecuniary penalties recovered under the act should be applied to the use of his Majesty, his heirs, and successors, and "from and after the commencement of this act, it shall not be lawful for any person or persons whatever, except where it is otherwise directed, to commence or enter, or cause or procure to be commenced or entered, or filed or prosecuted, any action, suit, bill, plaint, or information, for the recovery of any pecuniary penalty or penalties inflicted by any of the laws touching or concerning lotteries, or by this act, unless the same be commenced &c., in the name of His Majesty's Attorney General, in the Court of Exchequer at Westminster &c.; and if any action &c., shall be commenced or entered in any other person's name or names than as is before mentioned the same and all proceedings thereupon had, are hereby declared to be null and void, and the said Court or Courts where such proceedings shall be commenced, shall cause the same to be stayed, any law, custom, or usage, to the contrary notwithstanding." It was obvious from the terms of the warrant, that this act had reference to the alleged offence, but all jurisdiction in such cases was taken away from justices in such cases, and the prisoner was entitled to be discharged.

In opposition to the application, it was contended, that this could not be taken to be a case within the meaning of the last act referred to, for it was preposterous to suppose that any process could be sued out against a person in the situation of the prisoner, who was a travelling hawker, possessing no fixed residence, and whose movements could not be traced. State lotteries only were intended to be reached by the act, and the case of *Rex v. Liston*, 5 T. R. 338, was an authority to that effect, because although that decision had been given upon the terms of the 27 Geo. 3, c. 1, the more recent act of the 46 Geo. 3, c. 148, s. 59, was a mere re-enactment of the provisions of that statute. The last-named act, besides, referred to proceedings in any Court or Courts, and proceedings before justices could not be deemed to come within this description.

Cur. adv. vult.

Wightman, J.—I am of opinion that the objection taken in this case on behalf of the prisoner must prevail. According to the term—

of the 59th section of the 46 Geo. 3, c. 148, which include "all pecuniary penalties for any offence against any law, touching or concerning lotteries, or against this act," there can be no doubt that this case is included. The case of *Rex v. Liston*, has been referred to in answer to the objection; that decision appears to my mind to be an extraordinary one, I confess. That was a conviction, removed by *certiorari* into this Court, which conviction had been made under the 12 Geo. 2, c. 28, passed for preventing excessive and deceitful gaming. An objection there urged, was that the statute in question referred to the 10 & 11 W. 3, c. 117, which was passed for suppressing lotteries, and declared certain games within that act to be lotteries. Then the 27 Geo. 3, c. 1, was mentioned, by which the jurisdiction of magistrates was taken away in express terms to convict for penalties incurred for offences concerning lotteries. The judgment of the Court is thus expressed.—There is no pretence for either of the objections, the first (which is that to which I have referred) has been already overruled in a case which came before us two years ago. The lotteries meant by the 27 Geo. 3, c. 1, are state lotteries only. The case which had been before decided does not appear to be any where reported. On reference to the 27 Geo. 3, c. 1, certain acts are recited in the first clause, the first of which appears to be for suppressing illegal lotteries amongst other things; and sec. 2, takes away the jurisdiction of magistrates, and points out how penalties shall be recovered, "which shall be incurred by any person offending against such parts of the said acts or any of them as touch and concern lotteries." The case of *Rex v. Liston*, seems to decide that those words refer to state lotteries only, and yet one statute is

recited which refers to illegal lotteries generally. The statute 8 Geo. 1, c. 2, is one of those which are recited, and the object of that act is stated to be "for suppressing lotteries denominated sales, and other *private* lotteries." It is true that the words of the second section of the 27 Geo. 3, c. 1, are "as touch and concern lotteries," and that the Court in *Rex v. Liston* expressly says that that clause refers to state lotteries only, but that opinion is given on a previous decision, which is not reported, and the precise grounds of which, therefore, we have not before us. However, in this case, the language of the statute 46 Geo. 3, c. 148, s. 59, is very different from that of the 27 G. 3, c. 1, s. 2. Both the 42 Geo. 3, c. 119, and the 46 Geo. 3, c. 148, have been passed since the decision of *Rex v. Liston*, and whether the Court would have arrived at the same conclusion upon those statutes is another question. The seventh section of the 42 Geo. 3, c. 119, extends all the provisions, powers &c., of the 27 Geo. 3, c. 1, to itself, and even if it were not on account of the 46 Geo. 3, c. 148, the present commitment would be bad, as we have already seen that the 27 Geo. 3, c. 1, takes away the jurisdiction of magistrates. But the 59th clause of the 46 Geo. 3, c. 148, is decisive. That restricts proceedings for penalties to be taken in the name of the Attorney General in the Court of Exchequer, and applies in its terms to this case. Practically also, I believe, it is usual that the proceedings should be taken in accordance with its express provisions. The prisoner therefore, must be discharged.

Prisoner discharged. *Gunning*, in support of the application; *Palmer* and *O'Malley*, *contrd.*

Reginav. Tuddenham, T. T. 1841. Q. B. P. C.

CAUSE LIST, *Michaelmas Term*, 1841.

Rolls.

	Pleas and Demurrers.	Causes.	Further Directions and Costs.	Further Directions and Exceptions.	Exceptions.	Total.
Standing in the printed Book for Hearing at the commencement of Trinity Term, 1841	0	94	34	0	7	135
Matters set down after the Printing of the Book for Trinity Term and up to the Close of the Sittings (1841)	8	101	58	5	6	179
Matters in Consent Book	0	0	0	0	0	0
Total	8	195	93	5	13	314
Heard and disposed of, or removed from the General Paper:—						
As Short Causes	0	55	42	0	0	97
In the Regular Paper	4	20	12	0	2	28
Struck out, as Abated, or Compromised, or for some other reason	0	33	7	1	3	44
In Consent Paper	0	0	0	0	0	0
Total	4	108	61	1	5	179
Balance undisposed of as above	4	87	32	4	8	135
Matters adjourned at the Request of Parties as their regular time for Hearing arrived	0	20	7	1	3	31
Total now for Hearing	4	107	39	5	11	166

Judgments.

Sanders v. Benson
 Massie v. Drake, *petition*, 2 causes

Pleas and Demurrers.

Part Heard—Brown v. Perrott, *demurrer of defendant Soames*
 Allen v. Macpherson, *demurrer of defendants*
 Allen v. Macpherson, *demurrer of defendants Macpherson and others*
 Evans v. Todd, *demurrer of defendant Todd*

Matters which, in regular turn, would have been heard on a former day; but which have been adjourned at the request of Parties till after the First Day of Causes in Michaelmas Term.

Gibbs v. Bowes—*adj.* to come on with supplemental cause
 Ellis v. Griffiths—Ditto v. Carns—*adj.* till after report made
 Suckermore v. Dimes—*adj.* to come on with supplemental cause
 Millar v. Craig—*adj.* till after Term
 Cook v. Fryer—*adj.* for amendments
 Warwick v. Richardson—Clarke v. Sewell, *exceptions*—*adj.* to prepare a case

First day of Term—*Motions*

Matters which, in regular turn, would have been heard on a former day; but which have been adjourned at request of Parties till the First day of Causes in Michaelmas Term.

Hodge v. Rexworthy—Ditto v. Hodge, *further directions and costs, and petition part heard*
 Syngé v. Giles
 Davenport v. Bishop
 Holmes v. Blenkin—Ditto v. Holmes
 James v. Bidder
 Barber v. Swann—Buddle v. Ditto, *exceptions, further directions, and costs*
 Metcalfe v. Parrington—Ditto v. Jefferson, 2 causes, *further directions and costs, and supplemental suit*
 Attorney General v. Draper's Company
 Attorney General v. Christ's Hospital, Abingdon
 Ravens v. Taylor—Ditto v. Henrick, *further directions and costs, and petition*
 Lewis v. Davies, *exceptions*
 Lincoln v. Wright
 Lumsden v. Morison
 Marks v. Marks, *further directions and costs*
 Attorney General v. South Sea Company
 Western v. Williams, *further directions and costs*
 Lane v. Hardwicke
 Attorney General v. Bayly
 Wilson v. Mead
 Artis v. Artis
 Shalcross v. Wright
 Townley v. Deare
 Pidsley v. Mann—Ditto v. Sturgis—Ditto v. Mann, *further directions and costs*
 Davies v. Coleman, *further directions and costs*
 Cotham v. West, *exceptions*

Undisposed of Matters in the printed Book for last Term, whose turn for Hearing had not arrived at the close of last Sittings.

Richardson v. Richardson—(April 15) *
 Hedges v. Brick—set down February 8

Harrey v. Handley—Ditto v. Ewerson, *fur. dirs. and costs, and petition*—set down February 13
 Robinson v. Hunt—Scott v. Eglenton—Ditto v. Sturgis, *fur. dirs. and costs*—set down March 1
 Attorney General v. Prettyman, Meer Hospital—set down March 11
 King v. Hammett, *further directions and costs*—set down March 16
 Chennell v. Martin, *exceptions*—(April 3)
 Jackson v. Jackson—(April 15)
 Attorney General v. Corporation of Newcastle-upon-Tyne—(April 15)
 Butcher v. Musgrave—(April 17)
 Margerison v. Robinson—(April 17)
 Thompson v. Johnson—(April 17)
 Lambert v. Lambert—(April 19)
 Baker v. Bayldon—(April 19)
 Wyatt v. Sharratt—(April 19)
 Rutter v. Mariott—Ditto v. Edden—(April 19)
 Webb v. Tayler—(April 19)
 Norburne v. Ollett—(April 20)
 Morrall v. Lutton—(April 20)
 Sheffield Canal Comp. v. Sheffield and Rotherham Railway Comp.—(April 20)
 Tanner v. Elworthy—Elworthy v. Tanner—(April 20)
 Relfe v. Nursey—(April 21)
 Willatts v. Busby—(April 21)
 Bryan v. O'Neill—(April 21)
 Westenra v. Gregory—(April 23)
 Whiting v. Whiting, *further directions and costs*—(April 19)
 Pinkney v. Raine—Ditto v. Ditto, *further directions and costs*—(April 26)
 Knight v. Gosling—*further directions and costs*—(April 26)
 Allen v. Aldridge—Aldridge v. Westbrook—Parsons v. Same, *further directions and costs, exceptions and petition*—(May 1)
 Dounsworth v. Hodgkinson—*further directions and costs*—(May 3)
 Short—Hinde v. Blake—(May 8)
 Coleman v. Phipps—(May 8)
 Short—Nelthorpe v. Wright—*further directions and costs*—(May 10)
 Green v. Green, *fur. dirs. and costs*—(May 10)
 Alington v. Pain—(May 25)
 Lacy v. Allen—(May 25)
 Hemmingson v. Gylby—(May 25)
 Dorrien v. Livingstone—(May 25)
 Short—Cluna v. Crofts—Crofts v. Davy, *fur. dirs. and costs, and supplemental suit*—(May 26)
 Cockell v. Bridgman—(May 26)
 Wentworth v. Williams—(May 26)
 Turner v. Corney—(May 26)
 Farr v. Sheriffe—(May 27)
 Langton v. Horton—(May 27)
 Wright v. Maunder—(May 27)
 Wade v. Hopkinson—(May 27)
 Waters v. Anderson—(May 28)
 Ashton v. McDougall—(May 28)
 Connell v. Connell—(June 1)
 Undisposed of Matters set down since the Printing of the Book for last Term, and up to the present Time (11th October, 1841).
 Hyde v. Dallaway—set down June 7
 Leavens v. Edmondson—Ditto v. Limbert, 2 causes, *exceptions and further directions and costs*—set down June 21
 Davies v. Fisher—Ditto v. West—Ditto v. Phillips—*further directions and costs*—set down May 21
 Evans v. Harris
 Welford v. Oliver—Ditto v. Stainthorpe—(June 14)—set down May 27

* The dates within parenthesis indicate the days when subpœna notes returnable.

Agabeg v. Hartwell—Colvin v. Ditto, *further directions and costs*—set down May 29
 Voss v. Luce—Ditto v. Hayne—set down May 31
 Humble v. Humble—Ditto v. Ditto—Ditto v. Ditto—Ditto v. Scarborough—Ditto v. Johnson—*further directions and costs, and supplemental suit*—set down June 1
 Hempstead v. Hempstead, *further directions and costs, and 2 petitions*
 Story v. Tonge, *exceptions*—set down June 2
 Ellis v. Walmsley—Ditto v. Earl Grey, *further directions and costs*—set down June 4
 Acey v. Simpson, *further directions and costs*
 Attorney General v. Walmsley—(June 28)—June 4
 Attorney General v. Heron—(June 28)—set down June 4
 Attorney General v. Vincent—(June 28)
 Philanthropic Society v. Kemp, *further directions and costs*—set down June 9
 Bowen v. Parker, *further directions and costs*—set down June 10
 Hereford v. Ravenhill, *further directions and costs*—set down June 10
 Heighington v. Grant—Ditto v. Heighington—Ditto v. Grant, *further directions and costs*—set down June 14
 Hartwell v. Colvin—(June 30)—set down June 15
 De la Garde v. Lempriere, *further directions and costs*—set down June 15
 Strickland v. Strickland—(July 5)—set down June 16
 Wood v. Pattison—(July 6)—set down June 17
 Short—Attorney General v. Wilson, *further directions and costs*—set down June 18
 Falkner v. Matthews, *further directions and costs*—set down June 22
 Ovenden v. Stephens—(July 8)—set down June 22
 Douglas v. Leake—set down June 22
 Stillwell v. Clarke—Ditto (pauper) v. Hawkins—(July 12)—set down June 25
 Short—Mackenzie v. Mackenzie—Wellesley v. Ditto—(July 20)—set down June 29
 Attorney General v. Chester, St. John's Hospital—(July 20)—set down July 1
 Wall v. Baker—*fur. dirs. & costs*—set down July 3
 Att. Gen. v. Gell, *exceptions, further directions and costs*—set down July 6
 Short—Dashwood v. Auriol—(July 28)—set down July 9
 Griffiths v. Evan, *fur. dirs. & costs*, set down July 10
 Johnson v. Hardy—set down July 12
 Hales v. Darell—Ditto v. Hales—Ditto v. Raphael—Gibert v. Darell—Ditto v. Raphael, *further directions and costs & exceptions*—set down July 23
 Coleman v. Jessopp, *further directions and costs and petition*—set down July 26
 Ball v. Wivell, *fur. dirs. & costs*—set down July 26
 Attorney General v. Newbury—Ditto v. Birchall, *fur. dirs. and costs*—set down July 29
 Short—Eaton v. Eaton, *fur. dirs. & costs*—set down July 30
 Davies v. Peers, *fur. dirs. & costs*—set down Aug. 4
 Short—Barrett v. Deffell, 2 causes, *fur. dirs. & costs*—set down August 6
 Short—Thomason v. Moses, *further directions and costs*—set down August 6
 Short—Allaway v. Beecher—Ditto v. Maclean, *further directions and costs*—set down August 7
 Chadwick v. Broadwood, *exons.*—set down Aug. 10
 Page v. Broom—Ditto v. Page—Ditto v. Harris—

Ditto v. Edwards—Ditto v. Ganderton, *exceptions*—set down Aug. 13
 Whittle v. Henning, *exceptions*—set down Aug. 14
 Fyler v. Fyler, *exceptions*—set down August 18
 Walkins v. Stevens, 4 causes—Ditto v. Cornwell, 2 causes—Ditto v. Hawkins—Judson v. Ekins, *exceptions*—set down August 23
 Bridge v. Brown, *exceptions*—set down Sept. 4
 Wakeman v. Wakeman—(November 3)
 Cottrell v. Gem—(November 3)
 Blachford v. Kirkpatrick—(November 3)
 Wilding v. Eyton—(November 3)
 Attorney General v. Compton—(November 3)
 Benson v. Heathorn—(November 3)
 Dowell v. Daw—(November 4)
 Mann v. Mills—(November 4)
 Roades v. Rosser—(November 4)
 Clark v. Wormald—(November 4)
 Mynn v. Hart—(November 5)
 Pittom v. Howard—(November 5)
 Haddelsey v. Neville—(November 5)
 Shedden v. Idle—(November 5)
 Sickelmore v. Kingsford—(November 5)
 Padley v. Kidney—(November 6)
 West v. Price—(November 6)
 Leaman v. Oxenham—(November 6)
 James v. Frearson—(November 6)
 Rutherford v. McCullum—(November 6)
 Stubbs v. Iveson—(November 8)
 Upjohn v. Penruddocke—(November 8)
 Daniel v. Harding—(November 8)
 Lee v. Lee—(November 8)
 Marquis of Westminster v. Morrison—(Nov. 8)
 Wood v. Ordish—(November 8)
 Violet v. Searle—(November 11)
 Rickards v. Gurney—Ditto v. Crozier—(Nov. 11)
 Judson v. Ekins—(November 11)
 Short—Burmester v. Parry—(November 11)
 Beckett v. Swaine—(November 8)
 Prosser v. Seaborne—(November 11)
 Attorney General v. Webb—Ditto v. Godson—(November 11)

THE EDITOR'S LETTER BOX.

Several further letters on the Law of Attorneys Bill, shall receive early consideration.

The communications on the acknowledgment of deeds by married women; the Abolition of Imprisonment for Debt Act; the Tithe Commutation Act; and the New Orders in Chancery, shall be attended to.

We are glad to see the hand-writing again of an old Correspondent, under the signature of "Vindex," and shall insert his contribution.

The letters of "A Member of the Profession;" "A Constant Reader;" A. V.; and "Sub-Articulis;" have been received.

The next number will contain the Digested Index to the Cases reported in this Volume, with a Table of Contents and General Index.

The Legal Observer.

SATURDAY, OCTOBER 30, 1841.

— "Quod magis ad nos
Pertinet, et nescire malum est, agitamus.

HORAT.

THE NEW EQUITY COURTS.

MANY of our readers, on their return from the long vacation, will be in the condition of Aladdin's father-in-law, who, on waking up one morning, found a new palace had risen up in the night. They will rub their eyes when they enter the Old Square of Lincoln's Inn, and fancy they are in a dream. If the same despatch be exerted within the walls of the new Equity Courts as has been used on the outside, the delays of a suit in Chancery will henceforth only live in memory.

So great a change in the administration of the law, as is about to take place next week, will not be remembered by the oldest of our readers, and perhaps, it is not going too far to say, has not occurred for centuries. The appointment of the first Vice Chancellor in 1813, (which some may well remember,) only added one Judge to the Court of Chancery. The Master of the Rolls then sat only in the evening, and there was, considering the frequent absence of the Lord Chancellor from his own Court, little difficulty to the profession in accommodating itself to the change. Neither did the addition of the three Common Law Judges in 1830 make any material change in the practice of those Courts, as it only added one other Judge to each Court, who, in general, assisted the administration of justice as it had been perviously carried on. But, in the present change, not only is the Court of Equity Exchequer, and all its train, entirely abolished, but two new Courts have sprung up, sitting each separately, and each demanding a separate bar. Added to this, as the new Judges have been selected from

the advocates in the largest practice, a very large amount of business has been thrown open to the competition of the bar, which other circumstances have tended to increase.* Thus we shall have, if we mistake not, some considerable sensation, before things settle into their regular channels. We shall now have five Equity Courts sitting at the same time, each revolving in its own orbit, and some time must elapse before their exact gravitation is settled, and their relative bearings discriminated.

There is, we believe, no doubt that Mr. Knight Bruce and Mr. Wigram are to be the new Vice Chancellors. We understand that the situation was offered to Mr. Pemberton, but was declined by him; and wisely, as we think. He stands, it will not be disputed, far above all others now at the Equity Bar; and, as one of the most distinguished law reformers of the day, his loss would have been irreparable. We trust that, sooner or later, his hands will be clothed with the power to execute what he has already conceived,—that real reform of the Court of Chancery, which can only be successfully carried through by talents as commanding, integrity as pure, industry as indefatigable, as his own.

Among other rumours, it has been confidently stated that Lord Lyndhurst will shortly retire, being disinclined to the fatigue of the Chancellorship. We know not how this may be; but we cannot but think it highly probable that some plan for separating the duties now imposed on the holder of the Great Seal may be under consideration.

* It has been computed that upwards of 28,000*l.* will be thrown open to the gentlemen within the bar.

THE COMMON LAW JUDGES AND THE EDINBURGH REVIEW.

In an article on the Poor Laws, in the *Edinburgh Review*, just published, there are the following severe observations upon a body of men, who of all others, we believe, stand foremost in the confidence of all classes of our countrymen, and who are entitled, from their learning and labours, to the gratitude, not merely of the legal profession, but of the public at large. The *Review* in question is generally distinguished by a liberality of sentiment and soundness of judgment which have long made it popular in this country, and highly respected on the continent; and we most sincerely regret, that for its own sake, it should have sent forth the remarks so perfectly unfounded as the following:—"There is no tribunal in the world," says the writer, "to whose judgment we would more reluctantly leave any questions, the solution of which required general views of expediency, or indeed, any enlarged views at all, than the English Common Law judges. The narrow rules of construction with which they fetter themselves, render them the worst possible expounders of written instruments. Even in the interpretation of wills, where they profess to follow the intention of the testator, they gradually framed rules of construction so elaborately irrational that it was necessary about four years ago to pass an act totally reversing them. In the Poor Laws, their incompetence has been glaringly manifest, as knowing little of poor law administration, and absolutely nothing of the principles on which it ought to be grounded; wherever it has been possible to pervert an act of parliament, they have done so."

The person who could write such observations can be no practical lawyer, if he is a lawyer at all. Is he aware that the loudest complaint in Westminster Hall, as regards the Common Law Judges and their construction of statutes and written instruments, has been, that it has been somewhat too liberal; that Courts of Law, under the auspices of Lord Mansfield and his successors, have gradually been assuming a somewhat equitable tendency? That they have "*perverted*" acts of parliament, wherever possible, is a charge too absurd to deserve a serious refutation. The imperfections of language to convey adequately the will of the legislator, added to the haste, or carelessness, or ignorance of those who have penned their enactments, render the construction of statutes the most severe infliction upon the time and patience of

the Judges that can well be conceived. Let any non-professional man take up a stray volume of common law reports, and judge from the internal evidence therein contained whether the reverse of the reviewer's assertion is not the truth. But, a body so eminent for wisdom and fairness of mind as the Judges, (most of whom have sprung from the people) cannot require vindication from us. It is as lawyers, not as political economists, nor as partizans, that the Judges expound the statutes. "*Jus dicere*" is their simple commission, and that they have wisely and impartially executed it, but few professional men will venture to doubt—certainly none who have the slightest acquaintance with statutable construction in our Common Law Courts for the last quarter of a century.

CHANGES IN THE LAW, IN THE LAST SESSION OF PARLIAMENT.

No. I.

ADMINISTRATION OF JUSTICE IN EQUITY. 5 VICT. c. 5.

[Concluded from p. 490.]

50. *Provision for certain expenses and salaries.*—And he it enacted, that, out of the interest and dividends that have arisen or may arise from the government or parliamentary securities now or hereafter to be placed, in the name of the Accountant General of the said Court of Chancery, to the two accounts, intitled "account of monies placed out for the benefit and better security of the suitors of the High Court of Chancery," and "account of securities purchased with surplus interest arising from securities carried to an account of monies placed out for the benefit and better security of the suitors of the High Court of Chancery," or either of them, (but subject and without prejudice to the payment of all salaries or sums of money by any act or acts now in force directed or authorised to be paid thereout,) there shall be paid by the Governor and Company of the Bank of England, by virtue of any order or orders of the Court of Chancery to be made from time to time for that purpose, the salaries and sums following; (that is to say,) such sums as the Lord Chancellor shall think reasonable to be paid to such persons as he shall in any order in that behalf name, for work done, or monies expended in transferring the accounts heretofore kept by the Accountant General of the said Court of Exchequer to the books of the Accountant General of the said Court of Chancery, and in otherwise carrying into effect the provisions of this act in that behalf, and also the yearly salary of forty pounds to each person to be appointed under this act to keep order in the Courts of the Vice Chancellors, the same salaries to be paid quarterly on such

days and in such manner as the Lord Chancellor shall by any order in that behalf direct; and also such sum or sums of money, not exceeding in the whole the sum of five thousand pounds, as the Lord Chancellor shall think reasonable, for expences to be incurred in alterations or improvements of the offices of the Registrars, Accountant General, and masters of the said Court of Chancery, or any other of the offices of the same Court, for the purpose of rendering the same fit for the convenient reception and occupation of the several additional officers of the said Court appointed or to be appointed under the authority of this act, or generally for expences to be incurred in carrying this act into effect; and also such annual sum or sums of money as the Lord Chancellor shall think reasonable for the rent of any buildings or rooms which may be taken for any officers of the Lord Chancellor or of the Court of Chancery.

51. *Repeal of certain provisions of 3 & 4 W. 4, c. 94.*—And be it enacted, that so much of the said act passed in the fourth year of the reign of His late Majesty King William the Fourth as directs the payment of salaries to the registrars and clerks to the registrars of the said Court of Chancery shall, from and after the said fifteenth day of October one thousand eight hundred and forty-one, be repealed: provided always, that on the said fifteenth day of October one thousand eight hundred and forty-one such proportionate part of the same salaries respectively as shall have accrued since the last quarterly day of payment thereof to the said fifteenth day of October shall be paid to the registrars and clerks to the registrars under the said last-mentioned act, out of the fund placed to the credit of the Accountant General of the said Court of Chancery, intituled "the suitors fee fund account," by the Governor and Company of the Bank of England, by virtue of any order or orders of the said Court of Chancery to be made for that purpose.

52. *Salaries to registrars and clerks, and masters' clerks, to be paid out of the suitors' fee fund.*—And be it enacted, that, out of the fund placed to the credit of the Accountant General of the said Court of Chancery, intituled "the suitors fee fund account," there shall be paid (but subject and without prejudice to the payment of all salaries and sums of money which by any act or acts now in force are authorized to be paid thereout), by the Governor and Company of the Bank of England, by virtue of any order or orders of the said Court of Chancery to be from time to time made for that purpose, to the several officers named in the third schedule to this act, the several salaries or yearly sums set opposite to their respective names or titles in such schedule; and that such salaries or yearly sums shall be payable and paid, free from taxes and deductions, by equal quarterly payments, on the twenty-fifth day of February, the twenty-fifth day of May, the twenty-fifth day of August, and the twenty-fifth day of November in every year, a proportionate part of the first of such quarterly payments, to be computed from the said fif-

teenth day of October one thousand eight hundred and forty-one, to be made on the twenty-fifth day of November one thousand eight hundred and forty-one; and that upon the resignation, death, or removal from office of any such officer, such officer, or his executor or administrators, as the case may be, shall be paid such proportionate part of the salary aforesaid as shall have accrued since the last quarterly payment thereof to the time of such resignation, death, or removal from office, and that the succeeding officer shall be paid such proportionate part of the salary as shall be accruing or shall accrue from the day of the resignation, death, or removal from office of the preceding officer for the time being.

53. *Allowance to registrars for copying, &c.*—And be it enacted, that, out of the said fund placed to the credit of the Accountant General of the said Court of Chancery, intituled "the suitors fee fund account," (but subject and without prejudice as aforesaid,) there shall be paid by the Governor and Company of the Bank of England, by virtue of any order or orders of the said Court of Chancery to be from time to time made for that purpose, to each of the registrars of the said Court of Chancery for the time being (other than the present six registrars of the said Court,) in addition to their respective salaries, the yearly sum of one hundred pounds, so long as such registrar shall be liable to the expence of copying the decrees and orders of the said Court, and the minutes of such decrees and orders, and to the said Frank Milne as long as he shall hold the office of ninth clerk to the registrars, or either of the offices of eighth clerk to the registrars or seventh clerk to the registrars, the yearly sum of two hundred pounds, in addition to his salary as such clerk; the said yearly sums of one hundred pounds and two hundred pounds to be paid quarterly, with such proportionate parts and on the same days as are herein-before mentioned and appointed for the payment of the salaries payable out of the fund last herein-before mentioned.

54. *Power to Lord Chancellor to order retiring annuity to Mr. Richards and his successors.*—And be it enacted, that it shall be lawful for the Lord Chancellor, by any order or orders of the said Court of Chancery, to be made from time to time on a petition presented to him for that purpose, to order (if he shall so think fit) an annuity or clear yearly sum of money, not exceeding one thousand five hundred pounds, to be paid out of the interest and dividends that have arisen or may arise from the securities now or hereafter to be placed in the name of the said Accountant General to the two accounts, intituled "account of monies placed out for the benefit and better security of the suitors of the High Court of Chancery," and "account of securities purchased with surplus interest arising from securities carried to an account of monies placed out for the benefit and better security of the suitors of the High Court of Chancery," or either of them, (but subject and without prejudice as aforesaid,) to the said Richard Rich^d

wards, or any of his successors in the office of master in ordinary of the said Court of Chancery, if and when the said Richard Richards, or any of his successors, shall be afflicted with some permanent infirmity disabling him from the due execution of his office, and shall be desirous of resigning the same; and the annuity or yearly sum mentioned in such order or orders shall be paid by the Governor and Company of the Bank of England out of the interest and dividends of the said securities (but subject and without prejudice as aforesaid), by equal quarterly payments, on the fifth day of January, the fifth day of April, the fifth day of July, and the tenth day of October in every year, to such master in ordinary, from the period when he shall resign his said office, for the term of his life, free from taxes.

55. *Officers whose offices are abolished may make claims for compensation.*—And be it enacted, that it shall be lawful for any officer of the Court of Exchequer whose office will be abolished or affected by the operation of this act to make a claim for compensation, within six months after the passing thereof, to the Commissioners of Her Majesty's Treasury of the United Kingdom of Great Britain and Ireland, and the Lord Chief Baron of the said Court for the time being; and the said commissioners and the Lord Chief Baron shall proceed, in such manner as they may think proper, to inquire whether any compensation ought to be made to any such claimant, and, if any, what were the lawful fees and emoluments in respect of which the same should be allowed; and in every case in which such claim shall be established to the satisfaction of the said commissioners and the Lord Chief Baron they are hereby authorized and empowered to fix and determine, by an order under their hands, the amount of compensation which shall seem to them to be just and reasonable for the loss sustained by such claimant, not being, in any case where his office is wholly abolished by and he shall not be appointed to any other office under this act, less than three fourth parts of the full net annual value of the lawful fees and emoluments of the office so abolished; and the amount of such annual value as aforesaid shall be ascertained and fixed by the said commissioners and the Lord Chief Baron according to such an average of yearly receipts and disbursements prior to the passing of this act as they shall think proper; and the times when such annual compensations shall commence and also be payable (whether quarterly or otherwise) shall also be fixed by the said commissioners and Lord Chief Baron; and the said commissioners and the Lord Chief Baron shall have full power to award, in any case in which they shall think fit, such annual sum by way of compensation to any such claimant who shall be appointed by or under this act to any office or situation in the Court of Chancery, in addition to the salary attached to such office or situation, so long as he shall hold office under this act, and also an annual sum by way of compensation, to become payable when he shall, with the sanction of the Lord Chancellor, have

resigned such office; and all the compensations fixed and determined as aforesaid shall be issued and paid and payable by the Governor and Company of the Bank of England, by virtue of an order or orders for that purpose to be made by the said Court of Chancery, out of the interest and dividends that have arisen or may hereafter arise from the government or parliamentary securities now or hereafter to be placed to two several accounts in the Bank of England standing in the name of the said Accountant General of the Court of Chancery, and intitled "account of monies placed out for the benefit and better security of the suitors of the High Court of Chancery," and "account of securities purchased with surplus interest arising from securities carried to an account of monies placed out for the benefit and better security of the suitors of the High Court of Chancery," or either of them (but subject and without prejudice to the payment of all salaries and sums of money which by any act or acts now in force are authorized to be paid thereout): provided always, that an account of all such compensations shall, within fourteen days next after the same shall be so granted, be laid upon the table of the House of Commons, if parliament shall be then assembled, or if parliament shall not be then assembled, then within fourteen days after the meeting of parliament then next following.

56. *Power to Lord Chancellor to order retiring pension to registrars, &c.*—And be it enacted, that it shall be lawful for the Lord Chancellor, by any order or orders of the said Court of Chancery, to be made from time to time on a petition presented to him for that purpose, after the said fifteenth day of October one thousand eight hundred and forty-one, to order (if he shall think fit) an annuity or clear yearly sum of money to be paid to any person executing the office of registrar under this act, not exceeding two third parts of the yearly salary which such person shall under this act be entitled to at the time of presenting such petition, to be paid out of the interest and dividends that have arisen or may arise from the securities now or hereafter to be placed in the name of the said Accountant General to the two accounts, intitled "account of monies placed out for the benefit and better security of the suitors of the High Court of Chancery," and "account of securities purchased with surplus interest arising from securities carried to an account of monies placed out for the benefit and better security of the suitors of the High Court of Chancery," or either of them, (but subject and without prejudice as aforesaid,) if and when such person shall be afflicted with some permanent infirmity disabling him from the due execution of his office, or shall have continued in the office of registrar and the office of clerk to the registrars for the period of forty years, and shall be desirous of resigning the same; and the annuity or yearly sum mentioned in such order or orders shall be paid, by the Governor and Company of the Bank of England, out of the interest and dividends of the said securities,

(but subject and without prejudice as aforesaid, by equal quarterly payments, on the fifth day of January, the fifth day of April, the fifth day of July, and the tenth day of October in every year, to such registrar, from the period when he shall resign his said office, for the term of his life, free from taxes: provided always, that a continuance in the office of sub or deputy registrar and clerk in the registrar's office before the said act passed in the fourth year of the reign of King William the Fourth came into operation shall be deemed a continuance in the office of registrar and clerk to the registrars within the meaning of this act; and that as to such of the said sworn clerks and side clerks of the Court of Exchequer as are hereby appointed registrars or clerks to the registrars, the time during which they shall respectively have been sworn clerks and side clerks of the same Court of Exchequer before the said fifteenth day of October one thousand eight hundred and forty-one shall be added to the time during which they shall have been actually registrars and clerks to the registrars, and shall, for the purposes of this clause, be deemed and taken as part of the time during which they shall have continued in the office of registrar and the office of clerk to the registrars.

57. *Compensation to Hon. Mr. Scarlett to cease when he shall become a peer.*—Provided always, and be it hereby enacted, that every annual or other sum of money awarded by way of compensation or otherwise under this act to the Honourable Robert Campbell Scarlett, now one of the masters of the Court of Exchequer shall cease to be payable when and so soon as he shall succeed to the dignity of a peer of the United Kingdom.

58. *Provision in case of surplus or deficiency of fee fund.*—And be it enacted, that if at the end of any year there shall be a surplus standing to the credit of the said account intituled "the suitors' fee fund account," after payment of the several salaries or sums of money charged thereon by this act or the said act passed in the fourth year of the reign of King William the Fourth, it shall be lawful for the Lord Chancellor, by any order or orders of the said Court of Chancery, to direct that any surplus which may remain on the said account to be intituled "the suitors fee fund account," after paying the several salaries or sums of money charged thereon, or such part thereof as to the said Lord Chancellor shall seem fit, shall be invested in the purchase of parliamentary or government securities in the name of the said Accountant General, to be placed to the account intituled "an account of monies placed out to provide for the officers of the High Court of Chancery;" and it shall be lawful for the Lord Chancellor in like manner to direct the investment of the dividends or interest to accrue from time to time on such last-mentioned securities, or so much of such dividends and interest as he shall think fit, in the purchase of parliamentary or government securities in the name of the Accountant General, to be by him placed to the credit of the said last-mentioned account; and in the event

of there being a deficiency in the said account intituled "the suitors fee fund account," at any of the times hereby or by the said last-mentioned act appointed for payment of the salaries charged thereon, to raise and pay the several sums then due, it shall be lawful for the Lord Chancellor to direct the said Accountant General from time to time to make good such deficiency as often as the same shall arise, by carrying over and placing to the said account intituled "the suitors fee fund account" a sum sufficient for that purpose, out of the interest or dividends to arise from the government or parliamentary securities standing to the said account intituled "account of monies placed out to provide for the officers of the High Court of Chancery," or by a sale of so much of the said securities as may be necessary for that purpose; and in case such last-mentioned securities, and the interest and dividends thereof, shall be at any time insufficient to meet such deficiency, it shall be lawful for the Lord Chancellor to direct the said Accountant General to make good such last-mentioned deficiency so often as the same shall arise, by carrying over and placing to the said account to be intituled "the suitors fee fund account" a sum sufficient for that purpose, out of the interest and dividends that have arisen or which may hereafter arise from the government or parliamentary securities now or hereafter to be placed to two several accounts in the Bank of England standing in the name of the Accountant General, and intituled "account of monies placed out for the benefit and better security of the suitors of the High Court of Chancery," and "account of securities purchased with surplus interest arising from securities carried to an account of monies placed out for the benefit and better security of the suitors of the High Court of Chancery," or either of them.

59. *Power to invest surplus interest fund.*—And be it enacted, that the surplus interest and annual produce which hath arisen and shall arise from the monies placed out on the several accounts intituled "account of monies placed out for the benefit and better security of the suitors of the High Court of Chancery," and "account of securities purchased with surplus interest arising from securities carried to an account of monies placed out for the benefit and better security of the suitors in the High Court of Chancery," beyond what shall be sufficient to answer the purposes of this and the several other acts relating to such securities, and also the interest produced from the securities purchased with such surplus interest and annual produce, shall from time to time be placed out in the purchase of government or parliamentary securities in the name of the Accountant General of the said Court, and placed to the credit of the said account intituled "account of securities purchased with surplus interest arising from securities carried to an account of monies placed out for the benefit and better security of the suitors of the High Court of Chancery."

60. *Money placed out, if required to answer*

demands of suitors, to be called in.—And be it enacted, that if at any time hereafter the whole or any part of the monies placed out to the two several accounts intituled “account of monies placed out for the benefit and better security of the suitors of the High Court of Chancery,” and “account of securities purchased with surplus interest arising from securities carried to an account of monies placed out for the benefit and better security of the suitors of the High Court of Chancery,” or to be placed out in pursuance of this act, shall be wanted to answer any of the demands of the suitors of the said Court of Chancery, then and in such case the said Court may and shall direct the whole or any part of such monies to be called in, and the securities in which the same, and the surplus interest and dividends herein-before mentioned, shall be placed, to be sold and disposed of, in order that the suitors of the said Court may at all times be paid their respective demands out of the common and general cash belonging to such suitors.

61. *Accountant General of Court of Chancery to pay over one hundred and fifty pounds yearly to suitors' fund.*—And whereas the average annual amount of brokerages received by the Accountant General of the Court of Exchequer for his own benefit amounts to the sum of one hundred and fifty pounds; be it enacted, that the Accountant General of the High Court of Chancery shall, on or before the first day of September in every year, pay into the Bank, to be there placed to his credit as such Accountant General to an account intituled “an account of interest arising from securities carried to an account of money placed out for the benefit and better security of the suitors of the High Court of Chancery,” the sum of one hundred and fifty pounds, the first of such payments to be made on or before the first day of September one thousand eight hundred and forty-two; and such sum, when so paid in, shall be in all respects deemed to be part of such fund, and shall be applied accordingly.

62. *Power to change Securities.*—And be it enacted, that it shall be lawful for the Lord Chancellor, by any order or orders of the said Court of Chancery, to authorize the change of any security or securities, or of any part of the securities, to be purchased in pursuance of this act.

63. *Accountant General to make certain returns.*—And be it enacted, that the Accountant General for the time being of the High Court of Chancery shall annually cause to be laid on the table of the House of Commons a return showing the state of the several Funds in his name, called “The Suitors Fund,” and “The Suitors Fee Fund,” and the charges upon the same funds respectively.

64. *Interpretation clause.*—And be it declared and enacted, that in the construction of this act the expression “Her Majesty” shall mean also and include the heirs and successors of Her Majesty; and the expression “Lord Chancellor” shall mean also and include the Lord Chancellor, Lord Keeper and Lords

Commissioners for the custody of the Great Seal of the United Kingdom for the time being.

65. *Meaning of the term “barrister at law” and “barrister.”*—And be it enacted and declared, that in the construction of this act, and of every other act heretofore passed relating to the nomination or appointment to any office or employment, the expression “barrister at law” or “barrister” shall mean a barrister at law called to the bar either in England or Ireland, except where it is otherwise expressly provided.

66. *Act may be altered.*—And be it enacted, that this act may be amended or repealed by any act to be passed during the present session of parliament.

SCHEDULES.

The First Schedule referred to by the foregoing Act.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the sheriffs of London, greeting: We command you that you omit not, by reason of any liberty, but that you enter the same and distrain the Governor and Company of the Bank of England by all their lands and chattels in your bailiwick, so that they, or any of them, do not intermeddle therewith until we otherwise command you; and that you answer us the issues of the said lands, so that they do appear before us in our High Court of Chancery on the day of to answer a certain bill of complaint lately exhibited against them and other defendants before us in our said Court of Chancery by complainant; and further, to do and receive what our said Court shall then and there order in the premises, and that you then leave there this writ. Witness ourself at Westminster the day of in the year of our reign.

DEVON.

The second Schedule referred to by the foregoing act.

	Cash.	£	s.	d.
The King v. Anthill	225	0	0	
Ambler, the Creditors of Ogle and Ambler's account	369	13	1	
Ashton	10	18	9	
Butler, Samuel	5	0	0	
Bennett	15	0	0	
George Bennett	20	0	0	
Delamotte	1,065	17	10	
Faithfull	5	0	0	
Guy	10	0	0	
Harrison	17	9	4	
M'George	71	15	9	
Mew the younger	5	0	0	
Okey	23	14	0	
Roper, the creditors of Ogle, Roper, and Thorp's account	28	14	6	

Charles Snow . . .	92	13	0
Taylor . . .	65	0	0
Turner . . .	132	12	1
Weir . . .	200	0	0
Kent . . .	10	0	0
Whitworth . . .	56	17	0
Norham Land Tax . . .	17	9	8
The Queen v. Lane . . .	1,602	0	0
Holt . . .	710	0	0

The third Schedule referred to by the foregoing act.

	Salary per Ann.
The first registrar . . .	2,000
The second, third, and fourth registrars . . .	1,800 each.
The fifth, sixth, seventh, and eighth registrars . . .	1,500 each.
The ninth and tenth registrars . . .	1,250 each.
The first and second clerks to the registrars . . .	800 each.
The third, fourth, fifth, and sixth clerks to the registrars . . .	600 each.
The seventh, eighth, ninth, and tenth clerks to the registrars . . .	400 each.
The eleventh and twelfth clerks to the registrars, and any additional clerks to the registrars to be appointed under this act. . .	300 each.
The chief clerk to the master in ordinary in Chancery appointed under this act . . .	1,000
The junior clerk of such Master . . .	150

LAW OF LIBEL.

REPORT OF CRIMINAL LAW COMMISSIONERS.

[Concluded from p. 476.]

"We have, in the Digest, stated the law as we find it laid down by Lord Chief Justice Eyre, upon the trial of the case of *Curry v. Walter*, and afterwards by the Court of Common Pleas, on a motion for a new trial. This case was afterwards cited and approved of by Mr. J. Lawrence, in the case of the *King v. Wright*; observing that 'though the publication of such proceedings may be to the disadvantage of the individual, the having these proceedings made public, more than counterbalances the inconvenience to the private persons whose conduct may be the subject of such proceedings.' The truth of this position has no doubt been questioned, and to a certain extent directly impugned, and particularly by the decision and language of the Court in the case of the *King v. Carlile*. That was the case of a criminal information against the defendant Mary Carlile, for a libel entitled 'the mock trial of Mr. Carlile,' but which contained a correct account of what had taken place upon the trial, in the course of which the whole of Paine's 'Age of Reason' had been read. And the Court held, that though as a general position it was certainly lawful to publish the proceedings of courts of justice, yet it must be taken with this qualification, that what is con-

tained in the publication must neither be *defamatory of an individual*, tending to excite disaffection, nor calculated to offend the morals of the people; for if its contents were calculated to produce such effects, instead of disseminating useful knowledge, it would produce great mischief. And in the same case, *Bayley and Best, JJ.*, observed, that the case of *Curry v. Walter* must be taken with great qualifications. These opinions tend to impugn the generality of the doctrine expounded in *Curry v. Walter*. It is, however, to be observed, that in that case the complaint against the alleged libel was, that it contained matter defamatory of an individual; and it is difficult to suppose that in respect of blasphemous, immoral, or seditious publications, the Court of Common Pleas, had their attention been called to reports of trials on which libels of these descriptions had been read, would not have expressed an opinion similar to that afterwards given by the Court of King's Bench in *Carlile's case*. As the privilege in such cases is founded upon grounds of public policy and convenience, it ceases where the nature of the investigation is such that to publish it would obviously be offensive and injurious to the public, as where it involves blasphemous or indecent matters. Where the very object of the inquiry was to protect the interests of religion, morality, decency, and good order, by repressing impious, blasphemous, and obscene or seditious publications, it would not only be impolitic, but inconsistent, to allow the same matters to be afterwards published with impunity, as parcel of the judicial proceedings. The opinion of the Court of King's Bench, however, was not confined to blasphemous, seditious, or immoral publications, but extended to such as are defamatory of individuals; in this respect the opinion of the Court is at variance with that of the Court in the case of *Curry v. Walter*. Considering, however, that the decision of the Court in the latter case was not only a direct one, but under the circumstances, a very strong one, inasmuch as the proceeding reported was *ex parte* against the plaintiff, Mr. Curry, and that the general doctrine of the Court in that case was afterwards sanctioned by the Court of King's Bench in *Carlile's case*, and has never been overruled, we conceive ourselves to be bound to treat the decision in that case, as consonant with the existing law. We think that we are justified in respectfully expressing our opinion that the restriction attributed to the Court in the case of the *King v. Carlile*; viz., that no report of a trial which involves matter defamatory of an individual can be justified, would be almost destructive of the principle on which the general exemption in such cases is founded. If the rule admitted to exist is applicable only where nothing defamatory is published, it is nugatory as a protection,—in such a case no exemption is wanted. If, however, such a restriction were to prevail it would seldom happen, especially in criminal cases, that any report of a judicial proceeding could safely be published.

"We have next to advert to a class of communications, with respect to which, although a rule of law seems to have been established it is one which is at variance with every day's practice and experience. It has in several instances been held that even a true report of an *ex parte* proceeding before a magistrate, which reflects on the character of an individual, is illegal, and is the subject as well of a civil action to recover reparation for the injury to reputation, as of a criminal prosecution, inasmuch as the law not only does not recognize the right to publish such preliminary proceedings, but even deems them to be *per se* criminal, on account of their tendency to create prejudices inconsistent with the impartial administration of justice. In this respect, every day's open and ordinary practice is strangely at variance with a direct and settled rule of law, which professes to be founded on a principle of excluding a practice prejudicial to the course of justice. It is notorious that no preliminary inquiry takes place before a magistrate or coroner, of the slightest public interest, the particulars of which are not immediately communicated to the public by means of the daily press. It must be wrong either that the rule should exist, or that its open and daily violation should be tolerated. If the mischievous consequences which are alleged to be the foundation of this criminal rule, do in reality result from the practice, it is no slight reproach to the practical administration of the criminal law, that the practice should be permitted to exist almost without restraint. If, on the contrary, no such inconvenience results as ought to constitute a prohibition, the rule is not merely useless, but may be abused for unjust and oppressive purposes in particular instances, and a party who has done no more than is daily allowed to be done with impunity would have just ground for complaining of a deviation from the ordinary course to serve particular purposes. Finding that such a rule is sanctioned by several authorities, we have accordingly introduced it into the Digest. We cannot, however, but think that either the law ought to be subject to some limitation, or that if really found to be essential to the ends of justice, it should, for the attainment of those ends, be better enforced.

"It cannot be doubted, as a general principle, that the proceedings in Courts of justice ought to be open, and that publicity is valuable as affording a security for the just administration of the law, as conducive to the knowledge of right, and as essential to give due effect to judicial decisions, especially such as inflict punishment on delinquents by way of example to others. To this general rule there may no doubt be some exceptions,—some particular cases in which, for special reasons, it may be expedient, or even necessary for the purposes of justice, that proceedings of a preliminary nature should be conducted in secrecy. In such cases, and for such a purpose, it may be very fitting that the Court or magistrate should have a discretionary power to proceed accordingly; and, as essential to the same object, should have authority to prohibit the pub-

lication of the proceedings, in which case any such publication would constitute an indictable offence, as being in violation of an order made by competent authority for the advancement of justice.

"The offence thus far would rest on very plain principles. In ordinary cases, where no such special grounds exist, and where the public are not excluded from the preliminary inquiry, we are disposed to think that very little inconvenience is likely to result from a public report of the proceedings; indeed, it sometimes happens that such reports further the ends of justice, in drawing forth important information which otherwise would not have been obtained. We may further remark, that where the public are not excluded from such an inquiry, there is some degree of inconsistency in prohibiting a publication of the proceeding. Where nothing but want of space prevents all who choose from being present, it is difficult to say on what grounds those excluded may not receive information from those who are present; it is besides almost certain that those likely to make any improper use of such knowledge would be present to obtain it.

"The observation which we have just made, is also in some measure applicable to the publication of proceedings from time to time, during the course of a protracted trial. Such publication has not unfrequently been prohibited by an order of the Court. It may, however, well be doubted whether such an interdiction be not in some degree inconsistent with the principle of an open public Court, and whether danger or inconvenience to justice can reasonably be apprehended from publications of the proceedings in parts, previously to their conclusion. It is but, in fact, to communicate to the portion of the public excluded by want of space that knowledge which all possess who find admission, and amongst them those in particular who alone are likely to make an ill use of that knowledge."

[We shall here for the present close our extracts from the commissioner's report, but shall probably advert to some other parts of it at a future opportunity.]

BARRISTERS CALLED, Easter Term, 1841.

[By mistake this list was omitted at the time, though that of Trinity Term was given.]

LINCOLN'S INN.

May 4.

Arthur Palmer, jun.
Thomas Webster.
Thomas Comerford Bartrum.
Arthur Todd Holroyd.
John Reynolds Goodman.
John Beadnell, jun.

May 6.

John Lindsell.
Josiah William Smith.
George Henry Hooper.
Basil Thomas Woodd.
Henry George Allen.

INNER TEMPLE.

April 30.

Samuel Carter Hall.
John James Lowndes.
George Boden.
Francis Russell.
Edward Raphael.

May 4.

William Milman.
Francis Geary.
Henry Walter Wilson.

MIDDLE TEMPLE.

April 16.

George James Williamson.
William Charles Belt.
William Copland Redmond Judd.
Henry Andrew Simon.
Nicholas Gustavus Bestel.
Joseph William Wyld.

May 7.

Hans Busk.
John Arthington Leatham.
Brownlow Wynne Cumming.
Thomas Bacon.
Charles Forsyth.
Robert Phillimore.
Joseph Fletcher.
William Smith Ellis.
John Frederick Poll.

GRAY'S INN.

April 28.

Benjamin Chilley Pine.
Benjamin Boothby.

SUPERIOR COURTS.

Rolls.

HUSBAND AND WIFE.—DEED OF SEPARATION.

A deed of separation may be binding on the husband, though there is no covenant in it on the part of the trustees to indemnify him from his wife's debts, nor will the circumstance of its providing for the continued separation be sufficient to render it invalid. Whether the trusts contained in such a deed would not be put an end to by the parties living together again, quare.

*The Master of the Rolls, in delivering judgment in this case, which was argued several months ago, said, that the plaintiff was the widow of James Alexander Frampton, who before her marriage was entitled to a life interest in 19,000. consols, and 1,000*l.* other stock, which she assigned to her then intended husband, Mr. Frampton. Differences having arisen between them after the marriage, they agreed to live separate and apart, and a certain indenture, dated the 16th August, 1824, was executed, by which Mr. and Mrs. Frampton assigned the dividends on the above stock to trustees, upon trust during their joint lives to pay to Mrs. Frampton the annual sum of 300*l.*, and Mr. Frampton covenanted that his wife might live apart from him, and dispose of any*

*property which should accrue to her during her separation, and that he would enable the trustees to receive the dividends of the stock, or else would pay Mrs. Frampton the 300*l.* a year, which she agreed to receive in lieu of alimony and dower. From the date of this deed they lived apart, and for some time after the annuity was punctually paid. Subsequently, however, to 1829, Frampton paid his wife other sums, and the trusts of the deed were not strictly acted on, but the trustees never interfered. Frampton and his wife appeared to entertain no feelings of enmity towards each other, for they corresponded together, and seemed desirous of adding to each others' comforts, and Frampton offered to increase the annuity, for which Mrs. Frampton expressed herself obliged. In September, 1836, Frampton died, leaving the defendant his personal representative, and also the surviving trustee named in the deed of separation, but without ever having acted in the trusts. The plaintiff, Mrs. Frampton, having required performance of the trusts, and the defendant being wholly ignorant of what had transpired respecting the deed, and not feeling himself at liberty to act without the direction of the Court, the present bill was filed for the purpose of having the rights of the plaintiff declared. The execution of the indenture, and the receipt of the dividends by Mrs. Frampton alone were admitted; and the only questions were, first, whether the deed was invalid, as being founded on a consideration against the policy of the law, namely, the living apart of the husband and wife; and secondly, whether from the subsequent acts of the parties it was to be considered as abandoned. With regard to the first question, there were several decisions to show that if there had been a covenant from the trustees to indemnify the husband against his wife's debts, it would have been valid; but although Lord *Loughborough*, and afterwards Lord *Eldon*, in *St. John v. St. John*,^a had expressed doubts as to the doctrines in *Guth v. Guth*,^b yet there was no case in which it had been held, that without a covenant on the part of the trustees, the deed might not be binding on the husband. In this case trusts were created, and the wife covenanted to accept them in lieu of her rights; and admitting her covenant to be wholly inoperative, still there was no reason why such a voluntary trust should be vitiated on account of the provision to live apart. With regard to the second point, nothing had taken place from which it could be inferred that Mrs. Frampton intended to waive any benefit to which she was entitled. His lordship added, he would not say that if the parties had lived together again, that would not have put an end to the trusts; but that had not occurred: the separation had continued, and no change had taken place in the circumstances under which the deed was executed. There being then no waiver of the deed, the plaintiff was entitled to the relief asked.*

Frampton v. Frampton, July 31st, 1841.

^a 11 Ves. 526.

^b 3 Bro. C. C. 61.

Queen's Bench Practice Court.

REPLEVIN.—EXECUTION.—EXCESSIVE LEVY.
REFUNDING OF SURPLUS.

In an action on a replevin bond, the plaintiff recovered a verdict for the full amount of the penalty of the bond. Execution was issued for 317l. 10s., under which a sum of 271l. was realized, and that amount was paid over to the plaintiff. It was subsequently found that this was a greater amount than the plaintiff was entitled to: Held, that the Court could not on motion by the sheriff, nor by a second execution creditor, compel the plaintiff to refund the surplus.

This was an action on a replevin bond, in which the plaintiff obtained a verdict for the whole amount of the penalty of the bond. The amount of the distress was 125l., for which together with double costs of suit, the plaintiff was entitled to execution. A writ of execution was issued indorsed to levy 317l. 10s., under which 271l. was realized, and paid over to the plaintiff. It was subsequently discovered that this was 45l. more than he was really entitled to, and another writ of execution being lodged with the sheriff at the suit of one Timmins, to satisfy which, sufficient property of the defendant could not be found.

An application was now made on behalf of the sheriff, calling upon the plaintiff to show cause why he should not refund the surplus.

Wightman, J.—The sheriff has nothing to do with this difficulty. The 11 Geo. 2, c. 19, s. 23, gives relief to the parties to the bond, and I think that this application, to succeed at all, should be made by the defendant in the action.

Rule refused.

On a subsequent day a similar motion was made, on behalf of Timmins, the plaintiff in the second action. It was urged, that he suffered injustice by the improper detention of the 45l. by the defendant in the first action, which had been overpaid to him.

Wightman, J.—I cannot grant this rule at the instance of this applicant, unless some authority is cited. No duty arises between Timmins and the plaintiff in the first suit, and whatever breach of duty the sheriff may have been guilty of towards the former in over-paying the latter, for which perhaps a rule might be granted against him, the defendant in the first suit is a mere third party between the sheriff and the present applicant.

Rule refused.

W. H. Watson for the sheriff. *Platt* for the execution creditor.

Bovver, assignee of the sheriff of Carmarthenshire v. Lloyd, T. T. 1841. Q. B. P. C.

UNDERTAKING OF ATTORNEY.—DISCHARGE.

The attorney of the defendant, in an action of covenant, gave an undertaking that he would pay the amount awarded to be due from his client to the plaintiff; the award to be made by a particular day. The award was not made by the day specified,

but the time was enlarged by a judge's order, the attorney acting for his client when that order was made: Held, that the attorney was discharged from his undertaking under such circumstances.

This was an action of covenant, brought by the plaintiff Staité, against the defendant, who resided in Scotland. A Mr. Farquhar was appointed by the defendant to act as his attorney. A reference of the cause having been proposed, the plaintiff objected to the adoption of such a course, on the ground that the defendant lived out of the jurisdiction. Mr. Farquhar then offered to give his undertaking for the payment of the debt found to be due by the arbitrator with costs, and the submission to reference was then drawn up. The time for the making of the award was limited to the 1st February, but the arbitrator suffered that day to pass without making his award or enlarging the time. The object of the reference being therefore still unattained, on the 18th February a judge's order was made, enlarging the time "by consent of the attorneys or agents on both sides." Subsequently to this no new undertaking was given by Farquhar; and the arbitrator eventually made his award, directing the defendant to pay the sum of 220l. debt, and 42l. costs.

Butt moved for a rule, calling on Farquhar, the defendant's attorney, to show cause why he should not pay these two sums, and the costs of this application.

Ogle shewed cause.—First, there was nothing in the affidavits to shew that a demand of the performance of Farquhar's undertaking had been made, and as this was an application in the nature of a motion for an attachment, that was a necessary preliminary. But secondly, the default or refusal of Haddon, the principal, to obey the award, was left equally unasserted, and as Farquhar was a surety only, he could not be made liable until such default had been made. *Butesby v. Brooksbeck, Cro. Jac. 520*, showed that this was a principle from which the Court could not depart in pleading, and the same rule must here prevail. Thirdly, the attorney was clearly discharged from his undertaking by the enlargement of the time for making the award, for that enlargement was accompanied by no new promise or undertaking. The relative position of Farquhar and Haddon might have been materially altered after the 1st of February; and as the original undertaking must be taken to have been given entirely upon the faith of the existing state of things, the Court would not take it to continue so long in force after that state of things might be altered. That was an argument which must apply to the enlargement of the time by the arbitrator, as well as to that which had taken place by a Judge's order; but at all events, when a Judge's order had been made, no new condition being appended to it, the attorney must be deemed to be discharged. His undertaking at the time that Judge's order was made was mere waste paper; and the fact of his acting on that occasion as the defendant's attorney, did not in any way operate as a reviver of his liability.

Butt and Henderson, in support of the rule. The enlargement of the time had been made with the full knowledge and consent of Farquhar; he was acting as attorney when that enlargement was made, and it was not at all necessary that any new undertaking should be given to continue his liability. *Kite v. Millman*, 2 M. & Sco. 616, showed that an attorney might be compelled to fulfil a verbal undertaking to pay damages and costs on behalf of his client, where the other party had been induced to consent to take a verdict for a certain sum without going to the jury. This and other cases, therefore, showed that the Court would not be particular in construing undertakings given with very great strictness as to their terms. It was to be observed, that the plaintiff in this case had consented to the reference, solely on the undertaking of Farquhar being given, and it would be hard upon him now, upon such a technical ground as was here set up, to take away the remedy against him.

Coleridge, J.—I have no doubt that the rule must be discharged. It is an application to compel an attorney to perform his undertaking, which could not otherwise be enforced if he was not an attorney. The facts of the case are as follows: There was an action between Staite and Haddon, the latter being the client of Farquhar, and being resident in Scotland. Putting the case in the strongest point of view against the latter, I will take it that he persuaded the plaintiff to become a party to the reference, although he objected at first to do so, on the ground that Haddon resided in Scotland, and that the plaintiff refused to refer, unless Farquhar gave his undertaking. An order was accordingly drawn up, and the undertaking was given. But what was the undertaking to do? To perform the award; but that was to be made pursuant to this submission, and therefore ought to have been made within the time limited, which was the 1st February. The arbitrator neglected to enlarge the time from making his award before that day. What then was the situation of Farquhar on the morning of the 2nd February? Could it then be said, that his undertaking could be enforced? No doubt, he then stood absolved from it. The case stands in that position until the 18th February. Now again, assuming the fact in the strongest way against Farquhar, and taking it that he was renewing his application to the other party to go on with the reference, and that he consented to the order of enlargement being made, what was his situation? His written undertaking was gone for some days before that time. Now admitting that it was not necessary that the undertaking should be in writing, as has been urged, how am I to infer that he gave any new undertaking, or consented to renew the old one, merely because he acted as attorney in the matter. I am not at liberty to proceed on this application by mere guess, but I must see clearly that he has given his consent to the renewal of his undertaking. Everything that was done afterwards was done as attorney in the cause. But giving this undertaking is

not incident to his office of attorney, though the remedy on it is against him in that character. It is not because he does acts as attorney that he is to be considered as giving a fresh undertaking. The rule must therefore be discharged with costs, as it was moved with costs.

Rule discharged with costs.—*Staite v. Haddon*, E. T. 1841. Q. B. P. C.

DISTRINGAS.—OUTLAWRY.—SERVICE OF WRIT OF SUMMONS.

It is necessary, in order to obtain a distringas for the purpose of proceeding to outlawry, to endeavour to serve the writ of summons at the defendant's last known place of abode; and when that is not known, attempts should be made to discover it.

This was an application for a *distringas*, to proceed to outlawry. The defendant was stated to be a naval officer, and unsuccessful attempts to discover him, by applications at his banker's and at his agent's were disclosed, but no inquiries were stated to have been made at his last known place of residence. It did not appear, however, that any place of his residence was known, or that any efforts had been made to discover any.

Wightman, J.—The attempts to serve the defendant here disclosed are not sufficient. It is not shewn where the defendant lives, or that any efforts have been made to serve him at his residence. Although the defendant's residence is unknown, attempts should be made to find it. The defendant appears to be in England, and the motion should be for a *distringas* to compel an appearance, and not to proceed to outlawry.

W. Hill, in support of the motion.

Rule refused.—*Nugee v. Swinford*, T. T. 1841. Q. B. P. C.

CAUSE LIST, Michaelmas Term, 1841.

Queen's Bench.

NEW TRIALS.

New Trials remaining undetermined at the end of the Sittings after Trinity Term, 1841.

Easter Term, 1840.

Middlesex—Claridge v. Latrade

York—The Manchester and Leeds Railway Company v. Fawcett

Norfolk—Browne v. Clark, sued, &c.

Michaelmas Term, 1840.

Chester—Downs v. Cooper, in *replevin*

Suffolk—Brooke v. Jenny and another

„ Jones, a pauper v. Gurdon

Monmouth—Stonehouse and another v. Gent

Sussex—Wilkinson v. Martin

Essex—Baynes v. Brewster

„ Bevan and another v. The Guardians of the Poor of the Tonbridge Union, in the county of Kent

York—Johnson and another, assignees, &c. v. Constable, Bart. and another

Durham—The Great North of England Railway Company v. Webb

„ Dixon v. Ormsby and others
 Northumberland—Chapman v. Beckington
 Lancaster—Hearne, clerk v. Stowell, clerk
 „ Doe, dem. Myott v. The St. Helen's
 and Runcorn Gap Railway Company

Hilary Term, 1841.

Middlesex—Waters v. Earl of Thanet
 „ Contant and others v. Chapman, Esq.
 „ Beetham v. Cooke and others
 „ Hellewell v. Dearman and another
 „ Flather v. Stubbs and another
 „ De Villa v. Val Marino

London—Fuller v. Wilson
 „ Brooks and another v. Macleod
 „ Jackson and another v. Thompson
 „ Gibson and another, assignees v. Surrey
 Canal Company
 „ Millward v. Hibbert
 „ Moffatt and another v. Sidney
 „ The South Eastern Railway Company v.
 Rowe the younger

Easter Term, 1841.

Middlesex—Ewing v. Osbaldeston
 „ Egan v. The Guardians of the Poor of
 the Kensington Union, in the county
 of Middlesex
 „ Nicholson and another v. Ball
 „ Petherick v. English and others
 „ English v. Fairbairn
 „ Ashmole v. Wainwright and another
 „ Valaisiere v. Cowan and another
 London—Albon, trustee, &c. v. Hayman
 „ Sydney v. Belcher and another
 Surrey—Robinson v. Turner
 „ Mason v. King, Esq.
 Hertford—Doe, dem. of Crawley, Esq. v. William-
 son and others
 „ Osborn v. Kilpin
 Kent—Allhusen and another v. Strange
 Warwick—Cooper v. Blick and others
 Glamorgan—Doe, on the dem. of the Duke of Beau-
 fort v. Gough
 „ E. Thomas v. B. Thomas
 Chester—The Mayor, Aldermen, and Burgesses of
 the Borough of Macclesfield, in the
 county of Chester v. Walker
 „ Doe, on the dem. of the Mayor, Aldermen,
 and Burgesses of the city of Chester
 v. Francis

Carnarvon—Roberts v. Jones
 Denbigh—Williams, clerk v. Hughes and others
 Monmouth—Morgan, Bart. v. Powell
 Grover v. Price
 Hereford—Brydges, Bart. v. Lewis
 Worcester—Doe, dem. Evans v. Page
 Stafford—Blagg v. Appleby
 Cornwall—Roscorla v. Thomas
 „ Collins v. Horrell, the younger
 „ Wallis v. Frean and another
 „ Edmonds v. Same
 Wilts—Ogilvie v. Dallimore
 Devon—Atkinson v. Raleigh and others
 „ The Queen v. J. Ames and another
 „ Pinsent v. Knox
 Somerset—Doe, d. Parsley and others v. Day
 „ Laver v. Hawkins
 „ Doe, d. Goodlands v. Franklin
 Hants—Mant v. Collins and another
 Cambridge—Barley v. Sandle and others
 Bedford—Doe, d. Crawley, Esq. v. Williamson
 and others
 Suffolk—Doe, d. Pye v. Bramwhite
 „ Denny v. Clarke
 Norwich—Stannard v. Bush

York—Doe, d. Metcalfe, of Ivelett v. Metcalfe of
 Thwaite.

„ King v. Proctor
 „ The Queen v. W. E. Scott and another
 Lancaster—Munn and others v. Negroponte
 „ Anderton v. Chaffer
 „ Catterall v. Kenyon and wife
 Durham—Hedley v. Bainbridge

Trinity Term, 1841.

Middlesex—Coates and another v. Chaplin and
 another
 „ Jones v. Clarke
 London—Crotty v. Price and another
 „ Rowland v. Blakesley and others
 „ Green v. Streer
 „ Hey v. Wyche

SPECIAL PAPER.

Michaelmas Term, 1841.

* Archbishop of York and ors. v. Trafford and ors
 Milward and others v. Hebbert and another
 * Baker v. Greenhill and others
 Williams, Gent. v. Jones, Gent.
 Owen v. Adams
 Hinton v. Dibbin and others
 || Furze v. Sherwood
 Bennett and others v. Knight
 Howard v. Gosset and others
 Fransham and another v. Peile
 The Cheltenham and Great Western Union Rail-
 way v. Daniel
 Smith v. Faulkner and another, *in replevin*
 * The Cheltenham and Great Western Railway
 Company v. De Medina
 Morris, assignee, &c. of the Sheriff of Middlesex v.
 Matthews and another
 * King v. Share
 Johnson v. Faulkner, *in replevin*
 Bull and others v. Inwood
 Cooch and another v. Goodman
 Richards v. Dyke and another
 Chapman v. Bercham, *in replevin*
 Garton and another v. Robison
 * Jones v. Downman
 Stanley and another v. Beattie
 * Spry v. Bromfield
 Spilsbury and another v. Clough and another
 Vaughan and ux. v. Morgan, administrator
 Pegg v. Miller
 Blumenthal trading, &c. v. Castellain and another
 Smith v. Clinch
 Taylor v. Rolf and others
 Taylor v. Moore
 * Doe, d. Earl of Egremont v. Hellinges
 * Same v. Forward
 Jackson v. Magee
 Warren v. Bushell
 Gibson v. Ireson and another
 Percival and others v. Allanson
 Burdekin and another, assignees v. W. Jones
 Ransford and others v. Bosanquet, *in error*
 Williams v. Perkins and another
 Hunt and another, assignees, &c. v. Robins
 The Birmingham, Bristol, and Thames Junction
 Railway v. White
 Timbrell v. Cooper
 The Scriveners' Company v. Brooking
 Tomsett v. Clifton and others
 Ross v. Clifton and others
 * Mc. Intosh v. Hamilton, clerk

* Special cases. || Special verdict. The rest
 are Demurrers.

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MASTER EXTRAORDINARY IN CHANCERY.

From 21st September, to 22d October, 1841, both inclusive, with date when gazetted.

Iggulden, John, jun., Deal, Kent. Oct. 22.

DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

From 21st September, to 22d October, 1841, both inclusive, with dates when gazetted.

Cooper, Frederick, and Charles Cooper, Brighton, Sussex, Attorneys and Solicitors. Oct. 8.
Darwall, Charles Frederick, and John Potter, Walsall, Stafford, Attorneys and Solicitors. Oct. 1.
Douglass, James Alexander, and Joseph Cragg, Verulam Buildings, Gray's Inn, Attorneys and Solicitors. Oct. 8.
Redfern, William, and Clement Cotterill Redfern, Birmingham, Attorneys, Solicitors, and Conveyancers. Sept. 24.
Smart, Daniel, and William Adams Postlethwaite, Emsworth, Southampton, Attorneys and Solicitors. Oct. 22.
Stanley, John, and Henry Heane, Newport, Salop, Attorneys, Solicitors, and Conveyancers. Oct. 19.
Wright, Richard Seaton, and William Bolton Girdlestone, Golden Square, Attorneys and Solicitors. Oct. 12.

BANKRUPTCIES SUPERSEDED.

From 21st September, to 22d October, 1841, both inclusive, with dates when gazetted.

Alletson, Thomas, and Thomas Frankland, Liverpool, Oil Merchants and Drysalters. Oct. 15.
Bevil, William, Cheltenham, General Agent. Sept. 21.
Daniell, Charles, Oxford Street, Jeweller. Oct. 22.
Phillips, Thomas Jones, Newport, Monmouth, Scrivener and Corn Merchant. Oct. 12.
Potter, George, and Samuel Potter, Manchester, Calico Printers. Oct. 19.
Price, Joseph, James Purdy, and Joseph Price, jun., Yeovil, Somerset, Linen Drapers. Oct. 12.

BANKRUPTS.

From 21st September, to 22d October, 1841, both inclusive, with dates when gazetted.

Atkinson, Gales, Monkwearmouth Shore, Sunderland, Durham, Hardwareman. *Swain & Co.*, Old Jewry; *Young & Co.*, Bishop Wearmouth. Sept. 28.
Atkinson, William Milnes, Carlton and Beccles, Suffolk, Malster. *Teesdale & Co.*, Fenchurch Street. Oct. 22.
Butler, Joseph, Walsall, Stafford, Saddlers' Ironmonger. *White & Co.*, Bedford Row; *Smith, Walsall*. Sept. 21.
Beastall, William, Nottingham, Draper. *Payne & Co.*, Nottingham; *Gresham*, Castle Street, Holborn. Sept. 21.
Broadbent, Benjamin Rushforth, Spotland, Rochdale, Lancaster, Flannel Manufacturer. *Hillis & Co.*, Tokenhouse Yard; *Petty*, Manchester, Sept. 28.
Broome, William, Oxford Street, Linen Draper

Groom, Off. Ass.; *Turner & Co.*, Basing Lane, London. Oct. 1.
Bayly, Ebenezer, Exeter, Devon, Straw Bonnet Dealer. *Pennell*, Off. Ass.; *Seaman*, Pancras Lane, Bucklersbury. Oct. 5.
Busbridge, Henry, Upper North Place, Gray's Inn Road, Livery Stable Keeper. *Gibson*, Off. Ass. *Cutler*, Bell Yard, Doctor's Commons. Oct. 5.
Bishop, George Blight, and Frances Hildyard, Southampton, Drapers. *Gibson*, Off. Ass.; *Ashurst*, Cheapside. Oct. 8.
Brown, Robert, Kingston upon Hull, Bookseller, Printer, and Stationer. *Rosser & Co.*, Warwick Court, Gray's Inn; *England & Co.*, Hull. Oct. 8.
Bryan, Thomas, Leamington Priors, Warwick, Hotel Proprietor and Butcher. *Warrand*, South Square, Gray's Inn; *Empton*, Leamington. Oct. 8.
Byrne, Francis Lee, Liverpool, Wine Broker and General Commission Agent. *Raimond & Co.*, Gray's Inn; *Salter*, Ellesmere, Salop. Oct. 12.
Baldwin, John, Edgbaston, Birmingham, Wire Drawer. *Berwick*, Birmingham. Oct. 12.
Bridgman, Jesse, and William Dryland, Upper Chapman Street, St. George's East, Middlesex, Tallow Melters. *Whitmore*, Off. Ass.; *Crunder & Co.*, Mansionhouse Place. Oct. 19.
Borrowdale, William, Scenery Hill, Branthwaite, Cumberland, Paper and Paste Board Manufacturer. *Stubbs*, Furnival's Inn; *Messrs. Perry*, Whitehaven. Oct. 19.
Bumpstead, Edmund, otherwise Edward, Halesworth, Suffolk, Grocer. *Thompson & Co.*, Salter's Hall. Oct. 22.
Chilver, Robert, Ipswich, Suffolk, Upholsterer. *Johnson*, Off. Ass.; *Overton & Co.*, Old Jewry. Oct. 5.
Cooper, Edward, Edward Peter Cooper, Benjamin Cooper, and John Alexander Cooper, Staverton Mills, Trowbridge, Wilts, Clothiers. *Heathcote & Co.*, Coleman Street. Oct. 5.
Carey, John Barnett, Nottingham, Lace Manufacturer. *Yallop*, Furnival's Inn; *Parsons*, Nottingham. Oct. 5.
Crosswell, Stephen Hawes, late of Devonport, Devon, but now of Walbrook, London, and John May, jun., of Devonport, Wine and Spirit Merchants. *Pennell*, Off. Ass.; *Michael*, Red Lion Square. Oct. 8.
Coulsell, James, Richmond, Surrey, Builder and Bricklayer. *Lackington*, Off. Ass.; *Rightley*, Pantion Square, Haymarket. Oct. 8.
Carey, George, Nottingham, Lace Manufacturer. *Perrey & Co.*, Nottingham; *Austen & Co.*, Raymond Buildings, Gray's Inn. Oct. 8.
Caparn, John, Riddings, Alfreton, Derby, Brewer. *Capes & Co.*, Gray's Inn. Oct. 8.
Clark, John Sherring, Angel Court, Throgmorton Street, London, Broker and Scrivener. *Groom*, Off. Ass.; *Stephens*, Northumberland Street, Charing Cross. Oct. 12.
Cheetham, Thomas, sen., Stockport, Chester, Sargeon, Manufacturer of Cotton Thread and Doubler of Cotton Yarn. *Milne & Co.*, Temple; *Weston*, Manchester. Oct. 12.
Catlow, Robert, Leeds, York, Victualler. *Makinson & Co.*, Temple; *Foden*, Leeds. Oct. 19.
Drinkwater, William, Salford, Lancaster, Woollen Cord Manufacturer. *Johnson & Co.*, Temple; *Hewitt*, Manchester. Sept. 21.
Dittrich, Rudolph Moritz, Kingston upon Hull, Merchant. *Hicks & Co.*, Gray's Inn Square; *Holden*, Hull. Oct. 8.

- Drew, Robert, Camberwell, Surrey, late of King Street, Holborn, Furniture Dealer. *Turquand, Off. Ass.; Billing, King Street, Cheapside.* Oct. 15.
- Dorrington, George, Percival Street, Goswell Street, Printer. *Gibson, Off. Ass.; Goddard, King Street, Cheapside.* Oct. 19.
- Ellacott, John, Cheltenham, Gloucester. Shoe Manufacturer. *Savory & Co., Bristol; Hornby & Co., St. Swithin's Lane.* Oct. 8.
- Edwards, John, Hungerford, Berks, Wine Merchant. *Dinnock, Size Lane, Bucklersbury.* Oct. 12.
- Eastwood, Samuel, Huddersfield, York, Woolstapler. *Van Sandau, King Street, Cheapside; Jacob, Huddersfield.* Oct. 12.
- Frale, Nathaniel, and Joseph Emery Merchant, Bristol, Linen Drapers. *Jenkins & Co., New Inn; Clarke, Bristol; Brittan, Bristol.* Oct. 22.
- Frale, Nathaniel, Bristol, Linen Draper. *Wansey, Lothbury; Hansell, Bristol.* Oct. 22.
- Gamauf, Theophilus, Fetter Lane, Wholesale Furrier. *Belcher, Off. Ass.; Wood & Co., Corbet Court, Gracechurch Street.* Sept. 24.
- Gratton, Joseph, Newbold, Chesterfield, Derby, Brickmaker and Canal Carrier. Messrs. *Hall, New Boswell Court; Change, Chesterfield.* Oct. 5.
- Gibson, James, Over Darwen, Blackburn, Lancaster, Cotton Cloth Manufacturer. *Fisher & Co., Aldersgate Street; Barker, Manchester.* Oct. 8.
- Galpin, James, sen., Marnhill, Dorset, Malster and Brewer. *Combe, Staple Inn; Phillips, Weymouth.* Oct. 22.
- Hitchcock, William, Regent Street, Linen Draper and Silk Mercer. *Groom, Off. Ass.; Jones, Size Lane.* Sept. 21.
- Hammen, James, Great Portland Street, Oxford Street, Plumber. *Belcher, Off. Ass.; Harrison, & Co., Hart Street, Bloomsbury.* Sept. 24.
- Hadfield, John, Manchester, and of Bagguiley, Chester, Horse, Cattle, Corn, and Flour Dealer. *Makinson & Co., Temple; Atkinson, & Co., Manchester.* Sept. 24.
- Hulme, James, Manchester, Grocer and Shopkeeper. *Winstanley, Manchester; Milne & Co., Temple.* Sept. 24.
- Hobhouse, Henry William, Johnson Phillott, and Charles Lowder, Bath, Bankers. *English, Bath; Messrs. Burfoot, Temple.* Sept. 24 and 28.
- Heywood, John, Heaton Norris, Lancaster, Cotton Spinner. *Coppock & Co., Chester; Coppock, Cleveland Row, St. James's.* Oct. 5.
- Hoppe, Charles, Blackfriars Road, Surrey, Chinaman and Glass Dealer. *Edwards, Off. Ass.; Leigh, George Street, Mansion House.* Oct. 8.
- Halford, Richard, William Henry Baldock, and Osborn Snodden, Canterbury, Bankers. *Saunders & Co., Canterbury; Richardson & Co., Bedford Row.* Oct. 12.
- Holyland, Thomas, Manchester, Manufacturer of Woollen and Cotton Cloths, Waistcoatings, Fancy Trower Cloths, Stuffs, and Merinoes, also a Manchester and Yorkshire Warehouseman. *Safe & Co., Manchester; Messrs. Baxter, Lincoln's Inn Fields.* Oct. 12.
- Henley, George, otherwise George Summerhays Henley, Pall Mall, and of Savoy Street, Strand, Auctioneer and Estate Agent. *Gramham, Off. Ass.; Dickinson, Pall Mall.* Oct. 22.
- Iredale, William, Smithriding, Almondbury, York, Woollen Cloth Manufacturer and Merchant. *Lake & Co., Basinghall Street; Jacques & Co., Ely Place; Battye & Co., Huddersfield.* Oct. 15.
- Jones, Richard Archard, Friday Street, Cheapside, London, Linen and Manchester Warehouseman. *Johnson, Off. Ass.; Lofly & Co., Cheapside.* Oct. 22.
- James, Benjamin, and John Morris James, Manchester, and of Swansea, Glamorgan, Tanners and Leather Dealers. *Lowndes & Co., Liverpool; Sharpe & Co., Bedford Row.* Oct. 22.
- Kay, Richard, Halton, Whitechurch, York, Grocer. *Wiglesworth & Co., Gray's Inn Square; Messrs. Richardson, Leeds.* Sept. 21.
- Knell, John Corke, Millbrook, Southampton, Cattle Dealer. *Pennell, Off. Ass.; Piercy, Three Crown Square, Southwark.* Oct. 5.
- Little, James, Stockport, Chester, late of Hulme and Ashton-under-Lyne, Lancaster, Banker. *Johnson & Co., Temple; Hitchcock, Manchester.* Sept. 28.
- Lee, Thomas, Battye Mill, near Mirfield, York, Boat Builder and Innkeeper. *Walker, Furnival's Inn; Blackburn, Leeds.* Oct. 8.
- Mackay, Hugh, Liverpool, Merchant, and Archibald Fraser Mackay, of Glasgow, Merchant, trading at Liverpool. *Lowndes & Co., Liverpool; Sharpe & Co., Bedford Row.* Sept. 21.
- Morrish, John, Keynham, Somerset, Maltster. Messrs. *Burfoot, Temple; Bush, Beach Bilton, Gloucester.* Sept. 28.
- Morcom, Joel, St. Ives, Cornwall, Grocer. *Surr, Lombard Street; Lockyer & Co., Plymouth.* Sept. 28.
- Mott, Julius Caesar, otherwise Julius Mott, of Loughborough and Leicester, Wine and Spirit Merchant and Nurseryman. *Edwards, Off. Ass.; Michael, Red Lion Square.* Oct. 1.
- Morison, Andrew, Great Malvern, Worcester, Lodging-house Keeper. *White & Co., Bedford Row; Finch & Co., Worcester.* Oct. 8.
- Montath, William, Oxford Street, Linen Draper. *Green, Aldermanbury; Lloyd, Cheapside.* Oct. 12.
- Morris, Richard, Chepstow, Monmouth, Timber Merchant. *Whitehouse, Chancery Lane; Morgan, Birmingham.* Oct. 12.
- Neech, Robert, sen., Knukley, Suffolk, Farmer and Cattle Dealer. *Reynolds & Co., Great Yarmouth; Clarke & Co., Lincoln's Inn Fields.* Sept. 21.
- Nield, John, Quick, Saddleworth, York, James Nield, Dukinfield, Chester, John Nield, jun., Charlesworth, Glossop, Derby, and John Holt, of Charlesworth, trading at Dukinfield as Cotton Spinners. *Perkins, Gray's Inn; Parry, Manchester.* Oct. 15.
- Ogbourne, William Webb, Honey Lane, Cheapside, London, Commission Agent and Warehouseman. *Edwards, Off. Ass.; Beaumont & Co., Lincoln's Inn Fields.* Oct. 1.
- Potter, Richard, late of Guisborne Park, York, but now of Birkeacre, near Chorley, Lancaster, and of Manchester, and James Potter, of Manchester, Cotton Spinners and Manufacturers. *Makinson & Co., Temple; Atkinson & Co., Manchester.* Sept. 21.
- Pollitt, Mary, Charlestown, Pendleton, Lancaster, Fustian Dyer and Stiffener. *Wiglesworth, & Co., Gray's Inn; Stainbank, Manchester.* Sept. 28.
- Parkinson, James, Moorgate Fold, Livesey, Lancaster, Cotton Spinner. *Ainsworth & Co., or Swift, Blackburn; Bower & Co., Chancery Lane.* Sept. 28.

Pearce, John, Bedford, Tailor. *Johnson, Off. Ass.; New, Dyer's Buildings.* Oct. 12.

Paine, Edward, Liverpool, Drysalter. *Duncan & Co., Liverpool; Adlington & Co., Bedford Row.* Oct. 12.

Pountney, Humphrey, jun., Birmingham, Grocer. *Sharpe & Co., Bedford Row; Messrs. Ryland, Birmingham.* Oct. 15.

Peters, Thomas, Cambridge, Tailor. *Adcock, Cambridge; Smith, Bedford Row.* Oct. 22.

Reed, John, Newcastle-upon-Tyne, Sail Cloth Manufacturer. *Messrs. Fenchurch Buildings, London; Brown, Newcastle-upon-Tyne.* Sept. 24.

Richan, John, Thon as Richan, and James Blake, Sunderland, Durham, and Kingston-upon-Hull, Tanners, Braziers, and General Merchants. *Swain & Co., Frederick's Place, Old Jewry; Messrs. Wright, Sunderland; Potts, Sunderland.* Sept. 28.

Reuss, William Frederick, Liverpool, Merchant. *Chester & Co., Staple Inn; Davenport & Co., Liverpool.* Sept. 28.

Russell, John, Brampton near Chesterfield, Derby, Tailor and Draper. *Sale & Co., Manchester; Messrs. Baster, Lincoln's Inn Fields.* Oct. 8.

Richmond, John, and Robert Smith, Manchester, Yarn Agents. *Bower & Co., Chancery Lane; Barratt, jun., Manchester.* Oct. 12.

Sperling, James Moss, Halstead, Essex, Scrivener. *Daniell, Colchester; Wilde & Co., College Hill, London.* Sept. 21.

Saede, Francis, Chester, Timber Merchant. *Johnson & Co., Temple; Higson, Manchester.* Oct. 8.

Saunders, John, Plymouth, Devon, Porter Merchant. *Lane & Co., Goldsmith's Hall, London; Prileaux, Plymouth.* Oct. 15.

Searle, Cooper, Bury St. Edmunds, Suffolk, Printer and Bookseller. *Parker, St. Paul's Churchyard; Leach, jun., Bury St. Edmunds.* Oct. 19.

Smith, John, Deptford Bridge, Kent, Hatter. *Lackington, Off. Ass.; Collins & Co., Crescent Place, Bridge Street, Blackfriars.* Oct. 22.

Thompson, Charles Henry, Liverpool, Music Seller. *De Medina, Crosby Hall Chambers, Bishopsgate Street, and North Shields; Kent, Liverpool.* Oct. 1.

Hoffstaedt, Augustus Johann, Billiter Street, Fenchurch Street, London, Merchant. *Belcher, Off. Ass.; Jones & Son, Size Lane.* Oct. 5.

Tanner, Edward, Fish Street Hill, London, Ship and Insurance Agent and Commission Merchant. *Green, Off. Ass.; Weeks, Tokenhouse Yard.* Oct. 8.

Tomkinson, Joseph, Manchester, Joiner and Builder. *Chapman & Co., Manchester; Chester & Co., Staple Inn.* Oct. 8.

Taylor, William Henry, Norwich, Apothecary and Druggist. *Clarke & Co., Lincoln's Inn Fields; Beckwith & Co., Norwich.* Oct. 15.

Thompson, Henry, late of King Street and of Chadwell Street, Clerkenwell, and now of Thornhill Bridge Place, Islington, Middlesex, Merchant and Sawyer. *Whitmore, Off. Ass.; Crowder & Co., Mansion House Place.* Oct. 19.

Woodin, Thomas Iredale, New Cut, Lambeth, Surrey, Victualler. *Pennell, Off. Ass.; Ware, Blackman Street, Borough.* Sept. 24.

Wilson, Thomas, Kingston-upon-Hull, Joiner and Builder. *Tilson & Co., Coleman Street; Messrs. Wells, Kingston-upon-Hull.* Sept. 28.

Wilcock, Edward, George Teasdale, and John Turner, Ulverstone, Lancaster, Paper Manufacturers. *Wilson & Co., Kendall; Addison, Mecklenburgh Square.* Oct. 5.

PRICES OF STOCKS.

Tuesday 26th Oct., 1841.

Bank Stock div. 7 per Cent.	- - - - -	162½
3 per Cent. Reduced	- 86½ a 7 a 6½ a 7½ a 6½ a 7	
3 per Cent. Consols Annuities	88 a 7½ a 8½ a 8 a 7	
3½ per Cent. Reduced Annuities	- - 96½ a 8½ a 8	
New 3½ per Cent. Annuities	- - 97½ a 8½ a 8	
Long Annuities, expire 5th Jan. 1860	12½ a 2½	
Annuities for 30 yrs. exp. 5th Jan. 1860	12½ a 2½	
India Stock div. 10½ per Cent.	- - - - -	243½ a 3
Ditto Bonds 3½ per Cent.	- 1s. a 2s. pm.	a par.
South Sea Old Annuities div. 3 per Cent.	84½ a 8½	
3 per Cent. Cons. for acct. 25th Nov.	88½ a 8½ a 8	
India Stock for Acct. 25th Nov.	- - - - -	244½
Exchequer Bills 1000 <i>l.</i> a 2½ <i>d.</i>	- 12s. a 10s. pm.	
Ditto 500 <i>l.</i> do.	- 11s. a 13s. pm.	
Ditto Small do.	- 11s. a 13s. pm.	

THE EDITOR'S LETTER BOX.

The letters on the Certificate Duty; Warranty of a Horse; and Z. Y., shall be attended to.

We regret that we cannot assist "Observer" in his laudable ambition.

We wish that "Scrutator" and "Quiz" (judging from their letters) had a tythe of the talent they condemn. They are probably very sensible persons, but not quite the fit advisers on the contents of the work in question.

The necessity of closing several articles in the present volume has occasioned the postponement of some communications, which shall appear as early as possible.

The subject of Legal Examination Distinctions shall be again considered. We are aware that many of our aspiring subscribers are interested in it.

The Paper of a Correspondent in Staffordshire has been printed, and will probably appear in our next Number.

There seems to be no doubt that the service of warrants, notices, &c., may still be made at the Six Clerks' Office, and that the New Orders will not render it imperative to serve the solicitor.—We shall notice some other points next week.

We presume that a Candidate *would pass* who answered satisfactorily in Common Law and Equity, and in some other branch or branches,—answering in all forty questions.

The Fourth Part of the Quarterly Digest of all reported Cases will be published early next month.

We gave the Rolls Cause List in our last Number; the present contains the Common Law Lists, and the next will comprise the Lord and Vice Chancellor's Lists.

The *Legal Almanac* and *Diary* for 1842 will be published early in Michaelmas Term. Information to be inserted in this edition should be sent immediately.

DIGESTED INDEX

TO THE

CASES REPORTED IN VOLUME XXII.

ACTION.

Where *A.* was employed as agent by a great many persons who sued for debts in a Court of Requests, to receive money for them, and *B.*, an officer of that Court, actually received the money, and on being shown an account made out by *A.* of these monies, promised *A.* to pay them: Held that *A.* might maintain an action of debt for money had and received in respect of all the sums so received by *B.* *Gillott v. Appleby* Page 43

ADVANCEMENT.

The rule of equity against double portions from a parent to a child, prevails also where a relative assumes the duties of a parent towards children. Advancements made by either in his lifetime for the benefit of the children, are to go in ademption or satisfaction *pro tanto* only, of provisions made for them by his previously executed will. Circumstances and principles in which a person is held to have placed himself in *loco parentis*. The question depends on the intention of the donor, whether his gifts are mere gifts or portions; and the intention is to be collected from his conduct towards the children, or from the nature of the provisions made for them by him. Not necessary to shew that he assumed all the duties of a parent, or fully performed those which he did assume. He must be held to be in *loco parentis* as well at the date of the will, as at the time of the advancements: All the cases examined, and the reports of *Hartop v. Whitmore* and *Clarke v. Burgoyne* corrected. *Pym v. Lockyer* 253, 269

AFFIDAVIT.

1. In shewing cause against a rule for judgment as in case of a nonsuit, if it appears that the date in the jurat is wrong in the affidavit used to shew cause, the rule must be made absolute, but the Court may, under particular circumstances, allow the jurat to be amended. *Kelly v. Dignan* 46

2. Where an affidavit is sworn in the country before a commissioner, it is not sufficient to state after the commissioner's name, "a commissioner, &c.," even although the affidavit be sworn in a cause, and entitled in this Court (Exchequer). *Tarte v. Barnett* 319

AMENDMENT.

The Court will, under special circumstances, allow the name of one of two defendants to be struck out of the declaration, although issue has been joined, and the nisi prius record made up, the record entered, and afterwards withdrawn on account of the plaintiff being aware that the defendant in question had been improperly made a party to the suit. *Palmer v. Brule* 58

ARBITRATION.

1. In a reference of disputes with respect to the right to certain premises, the arbitrator awarded that certain conveyances should be

executed on a day named, and that in case of a disagreement as to the terms of those conveyances, it should be settled by such solicitor or counsel as he should appoint: Held, that the award was not final; that the arbitrator had exceeded his authority, and that the objection was fatal to the whole award. *Re Tundy* Page 463

2. A cause, in which several issues were raised, was referred to an arbitrator, who awarded a general verdict for the defendant without any specific finding on each issue: Held bad for uncertainty. *England v. Davison* 414

3. If an arbitrator, without authority, directs a *stet processus*, but disposes of the cause in pursuance of the submission, the directions as to the *stet processus* may be discarded, and the award allowed to stand good as to the rest. *Ward v. Hall* 111

ATTORNEY.

1. Where a purchase is made by a solicitor of property belonging to his deceased client, the Court will direct an enquiry into the circumstances under which such purchase was made, if it should appear that his fiduciary character continued up to the time of the purchase, although the property in question may have been purchased by him at public auction, and many years may have elapsed since the completion of the purchase. If a will, under the old law, which was intended to pass real estate, appears to have been executed in the presence of three witnesses, and the attestation of one witness is proved, and it is also proved that enquiries have been made after the other witnesses, but that they cannot be found, the Court will direct a reference to the Master to enquire whether the will was duly proved. *Thompson v. Day* 422

2. After a clerk has served an attorney for a certain portion of his five years, if his master becomes insane, and he continues to serve a portion of his time under an agent of the attorney, that time cannot reckon in the service requisite to authorize his admission. *Es parte Grant* 46

3. If the business of an attorney who has an articulated clerk declines, and he afterwards abscond, the Court will discharge the clerk from his articles. *Es parte Thomas* 59

4. If an attorney applies to be struck off the roll for the purpose of going to the bar, the affidavit on which the application is founded must be stamped. *Es parte Ward* 31

5. If an attorney indorses his residence as of a particular place in a particular county, and it is suggested that there is no such place in that county, the Court will not take judicial notice that there is no such place in that county, but the fact must be brought before the Court by affidavit. *Humphreys v. Budd* 319

6. The Court would not allow an attorney

M

to be re-admitted, who had been twice convicted of conspiracy to extort money by means of publishing libels in a newspaper. *Ex parte Haddon* Page 175

7. Where a client paid to his attorney certain money in his character of steward of a manor, the Court would not compel him to refund that money on a summary application for that purpose. *Ex parte Faith and another*. 223

8. The affidavit of an attorney in support of an application made by him, that he be struck off the roll, must be stamped. *Ex parte Watkins* 352

9. An attorney, being off the roll, having omitted to take out his certificate, employed an agent in town to sue out a writ of summons. The action being settled, costs in the suit were paid to the agent under a judge's order, made by consent: Held, that under such circumstances, neither the attorney nor the agent could be compelled to refund those costs. *Nash v. Goode* 493

10. The attorney of the defendant, in an action of covenant, gave an undertaking that he would pay the amount awarded to be due from his client to the plaintiff; the award to be made by a particular day. The award was not made by the day specified, but the time was enlarged by a Judge's order, the attorney acting for his client when that order was made: Held, that the attorney was discharged from his undertaking under such circumstances. *Stait v. Haddon* 522

BAIL.

Where money has been paid into Court in lieu of bail, and an award is made in the action for a sum less than that paid in, the Court will order so much to be paid out to plaintiff, but will not order the remainder to be paid out to defendant, without consent of the plaintiff, he having further claims on defendant. *House v. Steinkeller* 158

BANKRUPTCY.

1. The Lord Chancellor has no jurisdiction on a special case from the Court of Review, unless it contains a question of law or of equity, or of the admissibility of evidence: and no such question is raised by a case which states such facts only as a judge would leave to a jury to draw a conclusion from them. *In re Warwick and Cleggett* 221

2. If a bond is given pursuant to provisions contained in the 8th section of 1 & 2 Vict., c. 110, for the purpose of compelling, in certain events, the defendant to commit an act of bankruptcy, when it has been satisfied, it may be ordered to be delivered up to be cancelled, on an application to the Court in which the action is brought; and there is no occasion to make a specific application for that purpose to the Bankrupt Court. *Wilson v. Firth* 72

3. If a bond is given pursuant to 1 & 2 Vict. c. 110, s. 8, although it may vary in one word from the conditions prescribed by that statute, the Court will construe it according to the intention of the parties, and if the defendant has been regularly rendered before judgment, the Court will set aside a *ca. sa.* which has been issued for the purpose of fixing the sure-

Saunderson v. Parker 14

BARRISTER.

A barrister, as such, is not privileged from arrest merely because he is attending in the ordinary manner at the sessions. *Quere*, whether he would be privileged, if previously retained to attend the sessions. *Newton, Esq. v. Constable* Page 238

CERTIORARI.

The Court will not hear an argument on a rule to set aside an order returned by the sessions, under a certiorari issued by the Court of Q. B., if no notice of the application has been served on the justices who made the order. *The Queen v. Speckman, in the matter of the Blandford Road* 158

CUGNOVIT.

If an attorney is employed by both plaintiff and defendant in a particular transaction, his clerk cannot duly attest a warrant of attorney given by the latter to the former pursuant to 1 & 2 Vict. c. 110, s. 9, although the clerk is an admitted attorney. *Durant v. Blurton* . 239

CONVICTION.

In a conviction under a statute which required an offence to be prosecuted within three months after it had been committed, it was stated that on the 12th of June, in the third year of Victoria, the defendant was duly convicted in pursuance of the act 39 G. 3. for that on the 7th day of June, in the year aforesaid: Held, that the "year aforesaid" must refer to the year last mentioned, and that the conviction was therefore bad. *The Queen v. Higginbottom* 223

CORONER.

A coroner's jury cannot impose a deodand where the finding is manslaughter. But the jury ought to find the value of the goods moving to the death, so that they may be forfeited, if, on the indictment, the verdict should be guilty. *The Queen v. Polwarth* 72

COSTS.

1. Notwithstanding the rule of Hilary Term 4 W. 4, s. 7, a judge may still certify under the 4 & 5 Anne, c. 16, s. 4, that a defendant who has pleaded special pleas had probable cause for pleading them, and thus deprive the plaintiff of the costs of the issues on those pleas, though those issues have been found against the defendant. *Fry v. Monckton* 174

2. The power possessed by the justices at the quarter sessions, under the 5 & 6 W. 4, c. 50, to award costs on an appeal, cannot be assumed by individual justices; and therefore, if the sessions declare that costs shall be paid, but omit to specify the amount, the justices who are entitled afterwards to issue a warrant to enforce the order of sessions, cannot insert the amount, and if they do, their warrant will be illegal. *Selwood v. Mount and Bunney, Esquires* 414

3. The Court will not, where the plaintiff is a private soldier in the service of the East India Company, compel him to give security for costs, notwithstanding the custom of that company to require their soldiers to enlist for life. *Garwood v. Bradburn* 416

And see LIBEL and LUNACY.

CRIM. CON.

Though a husband and wife may be living separate from each other, under a deed proposed and executed by the husband, but not executed by the wife, and though other circumstances exist to shew that it was the husband's desire that they should be separate, yet he can maintain an action for criminal conversation against a person for an adultery committed after the separation. *Dundas, Clerk v. Hoey* Page 205

EJECTMENT.

1. If an application is made for judgment against the casual ejector, where the landlord proceeds under the 4 Geo. 2, c. 28, the affidavit supporting the application must show that there is no sufficient distress to countervail "six months rent" on the premises, and not "the arrears of rent" generally. *Doe d. Briggs v. Roe* 46

2. If a tenant in possession is a foreigner, service may be effected on him, and the usual explanation given through the medium of an interpreter. *Doe d. Cuttill v. Roe* 112

3. Where a declaration in ejectment is served in Easter vacation, and the notice required the tenant to appear in the next Easter term, it was held a sufficient service for a rule nisi for judgment against the casual ejector, the declaration being entitled of Easter term. *Doe d. Coombes v. Roe* 110

4. A defendant in ejectment having forcibly taken possession of premises, of which the sheriff had dispossessed him, and given to the lessor of the plaintiff in ejectment, the Court ordered writ of restitution to restore possession within a week. *Doe d. Pitcher v. Roe* 175

5. A rule having been obtained for staying proceedings in an action of ejectment, until the costs of a former action of ejectment, and an action for mesne profits had been paid, and on the ground that the same title was again in dispute:—Held, that an affidavit sworn by the lessor of the plaintiff, stating that his claim was not founded on the same title, was a sufficient answer to the rule, without any specific allegation as to the title under which he claimed. *Doe d. Baily v. Bennett* 431

6. Where in ejectment the tenant in possession had appeared and pleaded, his attorney having signed the consent rule, and the lessor of the plaintiff had replied, judgment as in case of a nonsuit may be obtained, although the consent rule has not been drawn up. *Doe d. Williams v. Smith* 334

7. A rule of Court had been obtained in an action of ejectment, requiring certain premises to be given up, without mentioning by whom, the tenant in possession being no party to the suit:—Held, that he was guilty of no contempt in refusing to give up possession; and that an attachment, therefore, could not issue against him:—Held, also, that as he was a stranger to the suit, a rule could not be granted requiring him to give up possession. *Doe d. Lewis v. Ellis* 494

8. Service in ejectment on the acting partner of a firm in possession of the premises sought to

be recovered, is sufficient for judgment against the casual ejector. *Doe d. Overton v. Roe* 464

9. The notice at the foot of the declaration in ejectment served upon the tenant, required him to appear in the "Common Bench." The declaration being rightly entitled in the Queen's Bench, the Court granted a rule nisi for judgment against the casual ejector. *Doe d. Evans v. Roe* 319

10. Where the tenant in possession of the premises sought to be recovered is a foreigner, and does not understand English, the object of the declaration and notice may be explained through the medium of an interpreter. *Doe d. Cuttill v. Roe* 318

11. Where a period of ten years had elapsed between the signing judgment and the execution in ejectment, the judgment not having been revived by *sci. fa.*, it was held that the want of the *sci. fa.* was such a substantial defect that although the tenant suffered more than four months to elapse before he moved to set aside the judgment, he was not deprived of his right to succeed in the application by reason of the laches. The application in such a case may be made by the tenant who has been served with the declaration, but has not appeared, judgment having been signed against the casual ejector; but the Court will not award costs against the lessor of the plaintiff, there having been no consent rule. *Goodtitle d. Murrell v. Badtittle* 399

ERROR.

If a party sues out a writ of error *coram nobis*, it is not necessary within the statutes to give bail in order to obtain the allowance of the writ. *Rawlins v. Thynne* 111

EVIDENCE.

1. Justices, who have drawn up an informal conviction, may, after it has been returned to the clerk of the peace, but before it has been appealed against, draw up and substitute for it a conviction of a more formal kind. But where justices had returned an informal conviction which, on being brought before one of the Judges of this Court was quashed for defectiveness, and they then drew up a second, it was held that this second conviction, which was perfectly regular, could not be given in evidence by them in an action brought against them by the person convicted. *Chaney v. Payne* 381

2. A person to whom a commission to examine witnesses had been directed, wrote his certificate and return on a piece of paper, which was annexed to the depositions. Before the trial, this paper was disannexed for the purpose of copying the depositions: Held, that they were not admissible in evidence, and that affidavits to explain the circumstance could not be received to make them admissible. *Ade v. Tommy* 463

3. Though the precise terms of a contract for the delivery of goods are not in evidence, a statement made by an agent at a time subsequent to the contract, namely, on the delivery of the goods, is not to be considered as made within the scope of his agency, and cannot, therefore, be received in evidence against the principal. *Palmer v. Gay* 43

4. A declaration in debt for tolls described them as tolls due to the mayor and corporation of Chester, in respect of all vessels entering and leaving the port of Chester. The evidence went to shew that the water bailiff, through the Custom House officer, (who actually collected the tolls) had received what was culled an "anchorage shilling." Held, that the Judge properly left it to the jury to consider whether this anchorage shilling was not, in fact, the toll claimed by the plaintiffs. The corporation being the claimant of this toll, a book coming from the possession of the sheriff, in which he charged himself with the receipt of it, was admitted in evidence to prove the existence of the toll: Held, that as the sheriff charged himself with liability by the entries of the receipt of money for the corporation, such book was admissible in evidence. The tolls, when received, appeared to have been appropriated by the water bailiff: Held, that it was properly left to the jury to consider whether he did not so appropriate them by authority of the corporation. *The Mayor, &c. of Chester v. Beard* Page 109

5. Upon an indictment against a parish for non-repair of an alleged highway, in which the question is, whether the way be a public highway or not, owners of land in the parish which is liable to be assessed to the highway rate, are competent witnesses for the defendants, although the land be, at the time of the trial, in the occupation of their tenants, who are rated in respect of it, by virtue of 3 & 4 Vict. c. 24. A line of road had been used by the public for seventy or eighty years, but, until 1829, a gate had stood upon a portion of the road, and toll was from time to time taken by the occupiers of the farm on which the gate stood; no obstruction ever existed at any other part of the road. In 1829, the owner and occupier of the farm diverted the road, and removed the gate, and since that period, the public had used the way without obstruction: Held, that it was properly left to the jury to say, whether since 1829, supposing the owner and occupier of such farm to have dedicated the way to the public, all the other owners of property along the line of road, had acquiesced in and consented to such dedication, so as to give the public a right to pass over their lands. *The Queen v. Inhabitants of Doddington* 28

6. If, when a writ of inquiry is executed, the plaintiff puts in evidence an account made out by the defendant, wherein he credits and debits the plaintiff, the credit side of the account is evidence against the defendant, but the debit side is not evidence for him. *Groom v. Richardson* 240

See INJUNCTION, 3.

EXECUTION.

If a writ of *testatum capias ad satisfaciendum* is issued into a county, different from that in which the *venue* is laid in the action, without a previous original writ of *capias ad satisfaciendum*, it is an irregularity merely, and not a nullity, and consequently a delay of six years in moving to take advantage of the irregu-

larity amounts to such *laches* as renders it unavailable to the defendant, although a prisoner. *Warne v. Haddon* Page 207

EXECUTORS.

If one of two executors interferes no further with the testator's estate than by joining in acts necessary and proper to give effect to the administration of the estate by his co-executor, he will not be held liable for the receipts of the co-executor; and in such a case there is no difference between executors and trustees. *Terrell v. Mathews* 397

GAMING.

A wager above 10*l.* in amount upon a horse race which has been actually run before the making of the wager, is not illegal within the statute against gaming. *Pugh v. Jenkins* 44

GUARDIAN.

After a verdict for a defendant in an ejectment, and while a rule for a new trial was pending in the new trial paper, the lessor of the plaintiff died. A Judge at chambers would neither order the case to be struck out of the paper on this ground, nor order the representatives of the lessor of the plaintiff to give security for costs; nor could the Court allow this as a preliminary objection to the rule for the new trial being argued.

A. claimed property as heir of his father, who died seised in 1816, *A.* being then twelve years old. Ejectment was brought by *A.* in 1837. From 1816 to the time of the ejectment, the step-mother of *A.* was in possession of the property, asserting it to be her own: Held, that *A.* was not entitled, on the trial of the ejectment, to treat his step-mother as his guardian in socage from the death of his father till he attained the age of fourteen, so as to get rid of the effect of the Statute of Limitations. *Doe d. Cosens v. Cosens* .. 56

HEARING.

If it is apparent that considerable injury may be done to a party by the hearing of a cause being delayed, and that no great detriment will accrue to the other suitors of the Court by its being advanced, the Court will order it to be heard at an early day, although an application for the purpose may be opposed by the other parties to the cause, and a suit may be pending in another Court, the decree in which might render further proceedings unnecessary. *Exatts v. Hall* 256

And see INJUNCTION, 1.

HUSBAND AND WIFE.

A deed of separation may be binding on the husband, though there is no covenant in it on the part of the trustees to indemnify him from his wife's debts; nor will the circumstance of its providing for the continued separation be sufficient to render it invalid. Whether the trusts contained in such a deed would not be put an end to by the parties living together again, *quære?* *Frampton v. Frampton* .. 531

INFANT.

1. The Court will not entertain a motion for removing the next friend of an infant, unless there be some reasonable ground for supposing that his continuance will be detrimental to the interests of the infant. The

fact of the same solicitor who acts for one of the defendants having a remote interest adverse to that of the infant, being also solicitor for the next friend, is not sufficient to induce the Court to interfere. *Bedwin v. Aspray* 12

2. The want of a next friend for an infant plaintiff is not a sufficient objection to prevent the continuance of proceedings in a suit, provided the defendant is willing that they should be continued, and there is an adult plaintiff who is equally interested with the infant. *McEnery v. Penn* 493

INJUNCTION.

1. An action for damages for breach of contract not to be stayed until an account of mercantile dealings between the parties can be taken in a suit in equity. There being no existing cross-demand, there is no ground to set off an expected balance in the account against the apprehended damages in the action. Lord Chancellor disinclined to advance causes for hearing above others, and will not interfere with the Vice Chancellor's discretion in that respect. *Russon v. Samuel*.. 108

2. The plaintiff having agreed with some of the defendants, who were proprietors of certain steam vessels, to give them the benefit of an invention secured by patent for economising the consumption of fuel on certain terms stated in the contract, the Court refused to grant an injunction to restrain them from assigning their interest in the vessels to the other defendants, and to prevent them from using any other machinery than that to which the plaintiff's invention was applied, on the ground that although the principle had been in part applied, yet that it did not appear to the Court that the plaintiff had succeeded in doing what he had engaged to do. *Bourne v. Oriental and Peninsular Steam Company*... 41

3. The Court will not dissolve an injunction obtained to stay proceedings in an action for the recovery of an alleged debt, unless the defendant in equity clearly and without qualification, answers the case stated in the bill. On a motion to dissolve an injunction, the plaintiff is not at liberty to give in evidence any parts of an account book produced under notice, unless his bill contains some charge relating to the parts proposed to be read by him. *Bartholomew v. Baker* 56

4. Where executors have allowed their testator's widow, to whom a life interest was given in all his property, to continue in possession and carry on the business formerly carried on by the testator for the support of herself and family, the Court will not, at their instance, prevent her from continuing in the management of the property, unless some satisfactory reasons can be suggested for so doing, although it will not restrain them from interfering. *Bates v. Willis* 70

5. The Court will restrain proceedings at law for the recovery of a bill of exchange accepted by one of several partners in the name of the firm, where the transaction is repudiated by the other partners, and there are sufficient circumstances to induce the Court to think that farther inquiry is necessary. But the

amount of the note must be brought into Court. *Smith v. Coleman*Page 124

6. The Court will not grant an injunction to stay the trial of an action at law where the defendant at law has had ample opportunity for making an application to the Court at an earlier period, but neglects to do so until the eve of trial. An order will be made, if necessary, in terms different from those contained in the notice of motion, if the parties have had the opportunity of bringing under review all the circumstances upon which the order is founded. Where a suit is instituted to restrain proceedings at law, and there are other defendants besides the plaintiff at law, the plaintiff in equity, in support of a motion for a special injunction, cannot avail himself of the answers of the other defendants, but must confine himself to the case stated by the answer of the plaintiff at law. *Scumble*, that on an application for a special injunction, no affidavits can be read except to prove documents. *Pinkus v. Hamburger* 300

7. Where a plaintiff has obtained the common injunction to restrain proceedings in an action, he will not be precluded from extending it upon a special application to stay trial, by reason of his having previously obtained a special injunction for other purposes connected with the suit. *Marley v. Smith* .. 398

8. An injunction will not be granted to restrain the settlor in a voluntary settlement from conveying freehold property, part of the property settled to a purchaser subsequent to the date of the settlement, the stat. 27 Eliz. c. 4, declaring such conveyances void as against purchasers. *Sevcs*, as to personality. *Gibson v. Barrow* 413

INTERPLEADER.

1. Tenant, after death of his landlord, pays rent to his devisee. The heir at law disputes the will, and claims the rent:—Held, that the tenant may compel the devisee and heir to interplead, and is entitled to an injunction to restrain either of them from bringing actions at law against him. *Jen v. Wood and others*. 123

2. Interpleader in equity is where two or more persons claim the same debt or duty:—Held, therefore (reversing a decree of the Master of the Rolls), that a bill by an auctioneer against his employer for sale, and two purchasers to whom he sold the same property of his employer successively, calling on them to interplead in respect of the several deposits paid by the purchasers is bad, there being no identity or connexion between the two deposits, the subject of the bill. *Hoggart v. Catts, Thodey, and Vicars* 27

JUDGMENT.

1. If a defendant obtains a rule nisi for judgment as in case of a nonsuit, and on showing cause against it, the excuse urged is the insolvency of the defendant, it is not sufficient to show that the defendant has become insolvent since the commencement of the action, but it must appear that the plaintiff's knowledge on that point has reached him since the last step taken by him for the purpose of trying the cause. *Fisher v. Lediard* 58

2. Where there is any doubt of the due service of notice of declaration upon the defendant, the Court will not relieve the plaintiff from the responsibility of signing judgment for want of a plea, by making an order that judgment be signed, but will leave him to take his own course. *Spriggins v. White* .. Page 319

3. A warrant of attorney having been given by a firm to the public officer of a banking company appointed under the 7 Geo. 4, c. 46, in respect of a loan of money made by the banking company, it being expressly stated therein that in case of a breach of the defeasance, judgment may be entered up "by his executors or administrators."—Held, that the authority to enter up judgment was not merely personal, but survived to his administratrix. The administratrix sought to enter up judgment under a prerogative administration in the province of Canterbury; but it appeared that several of the defendants were resident in the province of York:—Held, that the administratrix was entitled to enter up judgment, the case being unlike one where an applicant sought to recover a simple contract debt which would be *bonum notabile* in the province where the debtor resided, as the judgment was to be entered up in the province of Canterbury. Under such circumstances, the warrant of attorney being less than ten years old, the Court refused to grant a rule absolute in the first instance for judgment. *Edwards v. Holiday* 479

JUSTICE OF PEACE.

A magistrate must personally take any examination on which he is called on to issue his warrant. If he does not, although he may as a magistrate have jurisdiction over the case, he will not have done enough to found his right to the exercise of that jurisdiction. A warrant to a constable to apprehend *A. B.*, and bring him before a justice "to answer all such matters and things as shall be objected against him on oath by *C. D.*" is bad, and the magistrate who has issued it is liable in trespass. *Caudle v. Seymour, Esq.*..... 156

LEGATEES.

Where several estates, devised subject to the payment of certain legacies, have been sold, and the purchases of all except one have been completed, that one is primarily liable to the payment of such of the legacies as remain unsatisfied, and the purchase-money for it must be exhausted before any claim can be made on the other purchasers. If the bill states that there were other estates devised, and charge that they were also liable to the legacies, and the Master's report made in pursuance of the decree on the hearing, find that there were such other estates, the Court will, on an objection being taken for want of parties, order the purchasers of them to be brought before the Court by supplemental bill; but it is not necessary to make the original defendants parties to such bill. An order will be made at the hearing for a receiver, although the bill does not pray that a receiver may be appointed. *Rogers v. Rogers* Page 204

LIBEL.

A party who applies for a criminal informa-

tion for a libel, must abstain from attacking in any way the persons against whom he makes the application. He must leave his vindication wholly in the hands of the Court. When a rule is discharged on a preliminary objection, the Court will not discharge it with costs. *The Queen v. The Proprietors of the Nottingham Journal and others*..... Page 174

LOTTERIES.

Since the 46 Geo. 3, c. 148, s. 59, proceedings for the recovery of penalties for carrying on illegal lotteries, must be taken in the name of the Attorney-General, and not before magistrates, and the provisions of the act are not confined to state lotteries, but extend to those of a private nature. *Reg. v. Tuddenham* .. 509

LUNACY.

In the execution of a commission of lunacy, the lunatic's wife, although she admits his unsoundness of mind, will be allowed to attend effectually by her counsel, with a view to fix the period from which the unsoundness commenced; but it will depend on the return to the writ whether her costs will be allowed. *In re Parkinson* 204

MANDAMUS.

1. The Court will not hear and decide a question on the construction of a local act, when brought under discussion by an arrangement between the parties. *The Queen v. The Directors of the Blackwall Railway* 43

2. The Court will not grant a mandamus to public officers to pay over money to claimants, except where it is distinctly admitted to be due in fact. Where affidavits on an application for a mandamus satisfy the judgment of the Court, it is not a matter of course that the Court should grant a mandamus to enable one of the parties to try the truth of the facts so stated on the face of the affidavits. *The Queen v. The Lords of the Admiralty* 301

3. A party dismissed from an office in a corporation, may, under the provisions of the Municipal Reform Act, appeal to the Lords of the Treasury against the decision of the town council on the question of the amount of compensation, but cannot appeal to them on the question of his title to be compensated. Where the Lords of the Treasury had decided that a party was entitled to compensation, and had then, without hearing the corporation on the question of amount, fixed that amount, this Court refused a peremptory mandamus to compel obedience to the order thus irregularly made. *The Queen v. The Mayor and Town Council of Newbury* .. 126

MANOR.

A lessee of mines under the Crown, in the duchy of Lancaster, digs and takes away minerals, to the destruction of the surface and of the houses thereon, belonging to a copyholder of inheritance of the manor; the Court, in the conflict of authorities as to the custom, and before the copyholder establish a legal right, refuses an injunction, considering that greater injury would be thereby done to the lessee of the mines than could be done to the copyholder by the works, he being entitled to

compensation for damage. *Hilton v. Earl Grange* Page 315

MARRIED WOMAN.

Where property is bequeathed to a married woman to her separate use for life, with a power of directing the trustees to apply any portion of the income for the maintenance and advancement of her children, a security executed by her upon the property, if at all available, will not prevent her from subsequently appointing a portion of the income in favour of the children; but such appointment must be made previous to the filing of the bill for carrying it into effect. *Dulmaine v. Dulmaine* 379

MESNE PROFITS.

A judgment by default, in an action for mesne profits, only operates as an admission of nominal damages, although the period of time during which it is alleged that the defendant occupied is laid under a *videlicet*, and therefore evidence must be given of the period during which the defendant has actually occupied. *Ire v. Scott* 73

MORTGAGE.

1. In a suit for foreclosure against several mortgagors of the same property, the Court will not, in directing the usual accounts to be taken by the Master, make any order for the adjustment of claims between the respective mortgagors for payments alleged to have been made by them on account of the mortgaged property, but will leave them to be settled by independent proceedings. *Cotham v. Watson* 156

2. A. demised to B. by way of mortgage certain premises and the fixtures. The fixtures in the house were taken by the sheriff: Held, that trespass was not the proper form of action for the mortgagee. *Wheeler v. Montefiore and another* 471

3. Interlocutory judgment had been signed on the 17th April, in Easter Term; on the 20th, the mortgagee died; in Trinity Term, the Court refused to grant a rule to compute principal and interest on the mortgage. *Pitt v. Parker* 432

OVERSEERS.

The appointment of overseers at an adjourned petty sessions, the original sessions having been duly held under the 54 Geo. 3, c. 91, is good, although the adjournment-day is beyond fourteen days from the 25th March mentioned therein. *Reg. v. Sneyd and another* 383

PARTICULARS OF DEMAND.

A plaintiff is not conclusively bound by the terms of his particulars, and therefore where, by mistake, he insists in the particulars, as a payment the amount of a returned article, which amount, if actually paid, would have turned the balance against him, the Judge may properly leave it to the jury to say whether in fact the balance of the whole account is or is not in his favour. *Lamb v. Micklethwaite* 13

PLEADING.

1. In an action on a guarantee, in which the defendant had guaranteed to pay a stipu-

lated sum, if certain joint-stock shares should not make up that sum, the declaration alleged generally that the shares were without value—the defendant pleaded that they were not without value: Held, that this plea was too general; and that an order for striking it out was rightly made. *Murray v. Boucher* Page 13

2. *Quære*, whether the affidavit verifying a plea in abatement for non-joinder of a co-defendant, should not state his actual place of residence at the time of swearing the affidavit. *Whitley v. Golney* 335

PRACTICE (EQUITY).

1. On an application for the dismissal of a bill, if circumstances are shewn to induce the Court to suspect collusion between the party moving and a defendant who has not put in his answer, no order will be made; and if the plaintiff's account is also not satisfactory, the costs of the motion will be costs in the cause. *Pinkus v. Hamburger* 222

2. The order of May, 1839, which directs the taking of preliminary accounts, cannot be acted on where the accounts required to be taken are such as can only be properly ordered by decree. *Jacquet v. Edwards* 399

3. Where there is an evident omission in a decree, the Court will supply the defect by an independent order, although the motion for the purpose may be opposed, provided the addition sought to be made is consequential on the directions contained in the decree. The 45th order of 1828, applies only to cases where an order is required to be altered, and not where a substantial order is applied for. *Jones v. Creswick* 403

4. Where a limited administration has been obtained upon a representation of a party having died intestate, and the widow of the deceased only was cited, although it appears by the answer that he left a will by which he had named executors, the Court will not recognize proceedings taken under such a grant. If a motion for payment of money into Court is refused, it is a rule that the party applying should pay the costs, as he ought not to move without having a very clear case. *Stevens v. Jenkins* 477

PRACTICE (COMMON LAW.)

1. If a party, not an attorney, conduct his defence in person, he is liable to the same rules of practice as if the defence was under the conduct of an attorney: therefore, where an issue was delivered on the 13th March, misdescribing the date of the writ of summons by which the action was commenced; the delay to avail himself of the objection from that day till the 16th April was held such laches as cured the irregularity. *Currey v. Bowker* 59

2. If a consent is given to a judge's order being made for judgment and execution, it is not a case within the 1 & 2 Vict. c. 110, s. 9, although neither the defendant nor his attorney attends before the judge at the time of the order being made. *Braine v. Manton*.... 223

3. Where a rule nisi to set aside interlocutory judgment with a stay of proceedings, had been obtained, the court refused to make a rule

to compute on that judgment absolute. *Anderson v. Southern* Page 319

4. A rule was made absolute for referring it to the Master to determine what was due on a certain account; but the court refused to permit the same, when ascertained, to be introduced into the rule. *Ex parte Cos.* 207

5. Service of a rule of court upon the London agent of a country firm, is sufficient to bring the country attorneys into contempt, where the service has been so effected by their direction and consent; but where the consent was given by one of two partners: Held, that the second partner was not bound by it, and was not liable, therefore, to an attachment for disobedience to its terms. *Re Holiday* 335

6. In supporting a rule for an attachment for the non-payment of money pursuant to an award, an affidavit from the plaintiff or prosecutor himself is not necessary; but the demand having been made by the attorney in pursuance of a letter of attorney, an affidavit made by him that the money is still due is sufficient. *Reg. v. Paget* 384

7. It is a sufficient answer to a rule for an attachment for not obeying a writ of subpoena, that the day on which the witness is required to appear is stated differently in the writ and in the copy. Such a rule will also be discharged where the action being in ejectment, the names of the lessors of the plaintiff are omitted in the description of the cause in the writ. *Doe d. Clark v. Thompson* 400

8. It is necessary, in order to obtain a distringas for the purpose of proceeding to outlawry, to endeavour to serve the writ of summons at the defendant's last known place of abode; and when that is not known, attempts should be made to discover it. *Nuges v. Swinford* 523

9. Where money has been deposited in court, in lieu of bail in one action, it cannot, after bail has been perfected, be seized in execution in another action, under the 12th section of the 1 & 2 Vict. c. 110. *Winter v. Campbell* 318

10. On the 15th February, 1841, a levy was made on the goods of a defendant. It was held too late to apply to set the levy aside on the third day of Easter Term, on the ground that the defendant had not been served with process or notice of any proceedings previous to the execution of the levy, the plaintiff's proceedings only being objectionable in the light of irregularity, not nullity. *Holmes v. Russell*, ... 30

PROCESS.

1. Where a writ of summons is served on a defendant in a county of which he is not described, and it is sworn by the defendant that the place of actual service is more than two hundred yards from the boundary of the two counties, it is not sufficient on an application to set aside the service, for the plaintiff to swear that according to an authentic map the distance of the place of service is less than two hundred yards from the county boundary. *Isherwood v. Dohin* 127

2. If a writ of summons has been issued, and

attempts made to serve it unsuccessfully, but the Court has thought it right to direct a writ of distringas to issue, and those proceedings have taken place previous to the expiration of the four months, during which, according to the provisions of the Uniformity of Process Act, the process is in force, the writ of distringas, though issued after that expiration, is regular. *Bromage v. Ray* Page 45

QUARTER SESSIONS.

The 27th sect. of the 9 Geo. 4, c. 61, is not repealed by the 105 s. of the 5 & 6 W. 4, c. 76; and therefore the appeal against the decision of borough justices in refusing a license to sell spirits, &c., must still be made to the quarter sessions of the borough, and not to the recorder. *The Queen v. Henry Deane and another, Justices of Reading* 431

RECEIVER.

Where the surviving partner of a firm is appointed executor to his deceased partner, and continues to carry on the business for some time after the death of his deceased partner, but becomes bankrupt, the parties beneficially interested in the share of the stock and effects which belonged to such deceased partner are entitled, as against the bankrupt's assignees, to an injunction, to restrain them from selling the partnership property, and to a receiver, *Connell v. Walker* 155

REGISTRATION.

Where a registrar of births had been imposed on by a fraudulent statement, and had made an entry on the register, which was subsequently proved to be false, this Court, though desirous of interfering to prevent the fraud, held that it had no power, under the stat. 6 & 7 W. 4, c. 86, to issue a mandamus to the registrar to alter the register, or to make an entry in the margin, correcting the original entry. *The Queen v. The Superintendent Registrar of Births in Briston* 351

REHEARING.

Where a party has a full opportunity to bring his case before the Court, and neglects to avail himself of that opportunity, and his rule is discharged for want of producing sufficient materials for the judgment of the court, he cannot afterwards come to ask for a fresh hearing of the same application. *The Queen v. The Inhabitants of Barton* 127

REPLEVIN.

It is not regular for a sheriff to take a replevin bond in a penalty of a greater amount than double the value of the goods distrained; but the objection to the bond on that ground must be made promptly. The proceedings on a replevin bond may be stayed, on the terms of paying the amount of the appraised value of the goods, if less than the rent, double costs, and the costs of applying to the court. *Miers v. Lockwood* 303

2. Circumstances under which it was held that the Court could not, on motion by the sheriff, nor by a second execution creditor, compel the plaintiff to refund the surplus of an amount paid over to the plaintiff. *Bourser, assignee of the Sheriff of Carmarthenshire v. Lloyd* 522

REQUESTS (COURT OF).

A party by stating a cause of complaint to commissioners who act upon it, the matter not being properly within their jurisdiction, does not thereby become liable in trespass, at the suit of the person against whom he has thus set the law in motion. But the commissioners who have wrongly exercised their discretion on his statement, and have acted without jurisdiction, are liable: and so are their officers who have acted under their warrant. *Gurratt v. Morley* Page 126

SOLICITOR.

A solicitor who has been induced on the representations of his clerk, to take certain proceedings in the name of a person who proves not to be in existence, will not be liable personally for the costs which may have been incurred by the party against whom he proceeded: unless it can be shown that he was cognizant of the non-existence of the person in whose name he sued. *Elderton v. Peters* 508

SPECIFIC PERFORMANCE.

Equity will not decree specific performance against a party who is not lawfully competent to perform the contract; nor against a party, who has been induced, without professional advice to enter into a contract, which is contrary to the custom of the country, and without adequate consideration. *Ord v. Lyon* — *Lyon v. Ord* 172

STAMP ACT.

Where there is an arbitration, but no action has been brought, an affidavit used for the purpose of supporting an application to set aside an award made in the arbitration must be made on a stamp, notwithstanding the provisions of the 55 Geo. 3, c. 184, and 5 Geo. 4. *In re Templeman* 30

TRIAL.

A cause having been tried before the undersheriff, the Court will make it a term of a rule for a new trial, that it take place before a Judge of the superior court, without a fresh application being made for that purpose. *Moggridge v. Drew* 432

TRUSTEES.

The Court will not exercise the power given by the act of 1 W. 4, c. 60, for the appointment of new trustees, without a reference to the Master, if any proof is required to establish the rights of the *cestui que trust*. *In the matter of Tate* 237

VENDOR.

1. Where lands are devised, subject to a general charge for payment of debts and also subject to annuities, a purchaser cannot require the concurrence of the annuitants, nor any release from them. If a vendor reserve to himself the right of putting an end to the contract between him and a purchaser, he must act *bona fide*. *Page v. Adam* 427

2. Where an act contained a clause that all reasonable expences should be paid by commissioners: Held, that although the purchase money invested might be laid out in four distinct purchases, the commissioners were bound to pay all the expences of each purchase. *Ex parte Commissioners of Sewers* 272

WARRANT OF ATTORNEY.

Where a party gives a warrant of attorney, which is void, and which is therefore liable to be set aside, and afterwards becomes bankrupt, it is competent for the assignees to apply for the purpose of setting aside the warrant. *Brill v. Tidd* Page 494

WILL.

1. A testator bequeathed a sum of stock to trustees, in trust to pay the interest and dividends to his daughter and her husband during their lives, and the life of the survivor, and after their decease, then upon trust to transfer and pay over the stock unto their children, in such shares and proportions as the survivor should appoint by his or her last will: Held, that the power could only be exercised in favour of such of the children as should be living at the death of the survivor of the daughter and her husband. *Woodcock v. Renneck* 462

2. A testator gave an annuity of 600*l*. to his wife for life, and after her death to be divided among six children named, and the survivors: Held, (reversing a decree of the Vice Chancellor), that this was not a gift of so much of the fund as would produce 600*l*. a year, but a gift of an annuity limited to the life of the survivor of the children. *Blewitt v. Roberts, Same v. Stauffers* 411

3. Circumstances under which it was held that two papers might be taken together as the will of the testator, and a codicil, sent anonymously by the post to one of the legatees, nearly torn through in two places, and part of it burnt off, was held not to be cancelled. *Wood v. Goodluke, Helps, and others* 331

4. Where the residuary estate of a testator is divided by him into several parts, and a legacy is given out of one of such parts, which afterwards becomes lapsed, such legacy does not sink either into the general residue, or the portion of residue from which it was given, but devolves upon the next of kin. *Lloyd v. Lloyd* .. 380

5. A bequest of residue between several legatees, with words appended denoting a tenancy in common, although ordinarily construed into a gift *per capita*, may be controlled by the general context of the will, so as to allow certain of the legatees to take only *per stirpes*. *Brett v. Horton* 317

6. A general bequest of all a testator's property to a person for life, followed by an enumeration of various parts of such property, and then an absolute bequest of those parts, and all the residue of his property to the same person, does not enlarge the life estate into an absolute gift. *Vaughan v. Buck* 125

7. Where a testator, in making a bequest, uses words of recommendation from which a trust may be inferred, the Court will look to the whole will for the purpose of ascertaining the testator's intention with regard to such bequest. *Brierley v. Boucher* 71, 173

WITNESS.

It is no answer to a rule for examining a witness *vivâ voce* before the Master under the 1 W. 4, c. 22, s. 4, that he is the son of the party applying, if he is independent of his father; or that he is unwilling to submit to cross-examination. *Carruthers v. Graham*

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